

**V. EVIDENTIARY HEARINGS—
SEPTEMBER 13-16 & 21, 2010
ii. The Case of the House Managers**

predecessors, mind the constitutional line. My colleagues and I are now ready to address these allegations.

We are now ready to present the case in defense of the United States District Court Judge G. Thomas Porteous, Jr.

Thank you very much.

CHAIRMAN MC CASKILL: Counsel, we will take a 15-minute break, and when we will come back, we will look for the first witness for the House.

(Recess.)

CHAIRMAN MC CASKILL: At this point the committee will call upon the House to call their first witness.

MR. SCHIFF: Madam Chair, the House calls Jake Amato.

CHAIRMAN MC CASKILL: Mr. Amato, would you please raise your right hand so the oath can be administered.

Whereupon,

JACOB J. AMATO, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Mr. Amato, as you know, you have been granted immunity by the United

States District Court for the District of Columbia for your testimony before this committee. The court's order of July 27, 2010 was communicated to you at your deposition before this committee on August 2, 2010.

That order, which committee staff will hand you a copy of, covers your testimony today.

THE WITNESS: Yes, that's correct.

CHAIRMAN MC CASKILL: The House may proceed.

DIRECT EXAMINATION

BY MR. SCHIFF:

Q State your full name for the record.

A Jacob J. Amato, Jr.

Q Can you tell us a little bit about your educational background.

A Graduated from St. Paul High School in Covington, went to Southeastern University in Hammond, Louisiana, went to Loyola University in New Orleans and graduated from Loyola University law school.

Q About how long have you been practicing law?

A 40 years.

Q Where has your practice been based?

A Gretna, Louisiana.

Q Is that a part of Jefferson Parish?

A It is.

Q During your time of practicing law, was Thomas Porteous ever your law partner?

A Yes, he was.

Q About when did that begin?

A Sometime in the mid to early '70s.

Q How did you know him before he became your law partner?

A I was working in the district attorney's office in Jefferson Parish, and Judge Porteous was working for the Attorney General's Office for the State of Louisiana. Mac Gauchet and Judge Porteous were assigned to the district attorney's office, and they asked me to meet with him and show him the ropes.

Q Could you pull the microphone a little closer to you?

A Sure.

Q How long were you and then Mr. Porteous partners in your law practice?

A I would think somewhere between two and three years. I can't be any more specific than that.

Q What time period are we talking about?

When was this?

A Early to mid-'70s.

Q Did you also know Bob Creely?

A Yes.

Q Was he a law partner of yours as well?

A Yes.

Q And how did you come to be partners with Mr. Creely?

A I met Bob Creely on the ferry landing going from the East Bank to the West Bank and we started talking, and we had a group, Marion Edwards, Tom Porteous and I, and we convinced Bob to come start as a law clerk, and when he finished school and passed the bar, he came to work for us. And then at some point in time, Bob and I became partners. We looked for greener pastures.

Q Were you -- at the time that you brought on Mr. Creely, were you and Mr. Porteous already partners?

A Yes, we were.

Q Do you recall that Mr. Porteous became a state judge in Jefferson Parish in 1984?

A Yes.

Q And when do you recall he became a federal

judge?

A In mid-'90s, sometime in the mid-'90s. I don't know, '95, '96.

Q So he was on the state bench for about how long?

A I think 10 years.

Q During that 10-year period when Judge Porteous was on the state bench, did you have occasion to take him out for lunch?

A We went to lunch on a regular basis, yes.

Q How regularly would you go to lunch?

A I would say a couple of times a month maybe, average twice a month maybe.

Q What kind of places did you go for lunch?

A Good restaurants. I mean, we liked to eat well. Just -- he was a friend, fun to be with, good guy, told jokes, very friendly relationship with the judge, and we went to lunch.

Q Can you tell us a little bit more about the kind of places you went to? You said they were good places?

A Well, I mean, we went to Beef Connection, we went to Red Maple, we went to Bertucci's, we went to Chris's, and we went to Antoine's a few times, Galatoire's a few times. New Orleans is full of

restaurants.

Q On the scale of things, are these more expensive restaurants? These are not fast food places we're talking about?

A I didn't get this size eating fast food. No, they were good restaurants.

Q And if you added up the number of times over the years you took him to lunch, how many would it be?

A I couldn't tell you. I really, really couldn't tell you. Sometimes we ate in the office. Sometimes we went to somebody else's office to eat over the years. It's just hard to tell. But it was a number.

Q And you would have averaged at least a couple times a month?

A Absolutely.

Q What would the average check be for lunch at one of these restaurants?

A Depends on which restaurant we went to, how much time we had and how much drinking we did.

Q How much drinking would you do?

A Well, I've had drinks in my lifetime. I don't know. Two, three, four. Just depends if I was going back to work or not going back to work or

I was going home or celebrating something. Just depended.

Q How much would Judge Porteous have to drink?

A Well, he was a better drinker than I was, no question about that. It's hard to say. Depends on what he had to do, how much time he had, was he going back to work. You know, just -- we had a good time.

Q And on average, what would you say, how much would he drink during your lunches?

A At least two drinks.

Q What kind of drinks?

A I think he drank Absolut martinis.

Q When you say "at least two drinks," were there times he drank more than that?

A There were a number of times we drank more than that. I drank more than two, too.

Q And when the check would come, and I know you can't be precise about this, but were food and the alcohol on average, can you give us a sense of what the meal would cost?

A No, I -- I couldn't tell you. I mean, I just don't know.

Q Can you give us kind of a ballpark for one

of the -- one of the restaurants when an average check might be?

A Well, I haven't bought a drink in about 10 years, so I don't know what drinks are now. But some places you could drink for \$3 a drink. So if you had six drinks at \$3, that's \$18, and whatever the lunch was, 10, \$12, \$15. Hard to quantify that.

Q And over the years, would this -- are we talking about potentially hundreds of lunches?

A Yes.

Q In the course of these hundreds of lunches, how often did Judge Porteous pay the check?

A He paid a few times, and other people paid on occasions.

Q How many times would he pay?

A I couldn't tell you. You know, he paid on occasions. Rarely, but he paid.

Q Are we talking about once or twice?

A Probably. Maybe a little more.

Q Did you also take Judge Porteous on hunting trips?

A Yes, we had a tugboat we bought for \$2500, and we worked weekends and converted it to a hunting camp. And he would go hunting and fishing with us on a regular basis. And on those occasions, he

would bring food sometimes, he would bring whiskey sometimes, he would bring cigars sometimes.

Q And when you would go on these hunting trips, did you pay all the other expenses?

A Yes. I say yes, but I don't know who bought the shotgun shells, whatever. Yes.

Q And your partner, Mr. Creely, would take him on hunting trips as well?

A Well, Mr. Creely would take him on the hunting trips. I would stay at the camp and guard the liquor supply and the food and cook.

Q The general expenses of these trips were paid for by either you and Mr. Creely?

A Yes.

Q Did you and Mr. Creely pay for Judge Porteous to take a hunting trip to Mexico?

A I think so. I don't know when -- I know it was before he was a federal judge, but I don't know how -- I don't know if because there was more than 10 of us there was a free ticket and he got the free ticket or how that worked out.

I -- I really -- that's 20-something years ago at least.

Q Were there additional hunting trips with Mr. Creely in Mexico with Judge Porteous?

A I think there was. I didn't go on any of them. I went on one.

Q To your knowledge, did Judge Porteous pay for any of these trips to Mexico?

A I don't -- I don't think -- I don't know. I mean, I just don't know.

Q While Judge Porteous was on the state bench, did you and Mr. Creely ever give cash to the judge?

A Yes.

Q And how did that come about?

A I don't know. I'm sitting here thinking about it, and I've thought about it for the last few years. And I think -- I think that there was a discussion that took place with Judge Porteous and Creely about, you know, sending curator cases to the office, and he was to get a percentage.

Q And did Mr. Creely come and discuss this conversation with you?

A Yes. I never discussed that with Judge Porteous at all, ever. To this day I've never discussed that with him.

Q And tell us what, as best you can recall, what Mr. Creely told you about the request for cash and the curatorships.

A That the judge was sending curator cases to him and that he would, in turn, give money to the judge.

Q And did he tell you why the judge wanted the money?

A I presume he needed it. But no, Bob didn't tell me why the judge needed the money, other than, you know, he always had some sort of family catastrophe, couldn't pay his house note, couldn't do this, couldn't do that, you know.

Q Now, the first time Mr. Creely brought this to your attention, that the judge wanted cash back from these curatorships, were you aware that Mr. Creely had been giving him money before the curator cases started coming?

A No.

Q So the first time it was brought to your attention was in connection with the curator cases?

A Yes.

Q And what, as best you can remember, did Mr. Creely say about the connection between the curators and the cash requests?

A That we would split the net difference between us and the judge. And I told him I thought it was going to turn out bad.

Q Why did you tell him you thought it would turn out bad?

A Obviously it did. I mean, I just didn't feel comfortable doing it, but I wasn't -- I wasn't strong enough to stop it.

Q Did you understand that giving the judge money back from these curatorships was wrong?

A I felt that they were probably unethical more than being, you know, some type of criminal offense.

Q I'm not going to ask you the legal definition, but did you view giving the judge back money from these curators as a form of a kickback?

A Yes.

Q Did Mr. Creely ever tell you that Judge Porteous was bugging the hell out of him for the curator fees?

A Yes.

Q What do you recall of that conversation?

A He just said Tom has called him and hounded him and, you know, where's, you know, my curator money?

Q Did you ever have any doubt in your mind that the money was coming from the curatorships?

A Did I ever -- I'm sorry, could you repeat

that?

Q Did you ever have any doubt in your mind that the money you were giving to Judge Porteous was coming out of the curatorships?

A Yes, I had no doubt.

Q Yes, you had no doubt?

A Yeah, I presume that's where it was coming from, yeah.

Q And can you tell us mechanically how this worked? The judge sent you curator cases, asked for money. How would you give him the money?

A Cash.

Q And how did you get the cash to give him?

A We'd take a draw check, each one of us would take a draw check, either for the full amount or for something less than the full amount than was our regular draw, and put it in an envelope and give it to Judge Porteous was all.

Q How did that work? You had a bookkeeper at the firm?

A Yes, we had a bookkeeper, secretaries.

Q I'm sorry, could you pull the microphone even closer?

A I think the chair keeps rolling away from me.

Q Why don't you go ahead and, if the microphone will allow you, why don't you pull the microphone closer to you.

A All right.

Q Okay. Thank you.

So your bookkeeper would do what, write a check to each of you and then you would cash it?

A That's correct.

Q And you would tell the bookkeeper to -- what the amount should be?

A Yes.

Q Why didn't you just have the bookkeeper write a check to Judge Porteous?

A I guess to avoid any kind of paper trail.

Q When Judge Porteous was named to the federal bench, was he able to send you curator cases?

A No.

Q By the way, Mr. Amato, did you ever ask for the curator cases?

A No.

Q To your knowledge, did Mr. Creely ever ask for the curator cases?

A No. I don't think I got any curator cases from Judge Porteous over the years. I might have

gotten a few, but I --

Q When you say that you didn't get them, your firm got the cases?

A Yes.

Q And the money for the curatorships went into the firm's account?

A Correct.

Q And you paid income tax on the money received from curators --

A Yes.

Q And how did you determine the amount to give back to the judge from the curator cases?

A I -- I didn't have anything to do with the actual mechanics of it, but I would presume it would be, you know, 10 curators, and he'd get half of the fee, about \$200 a curator. So 10 curators, he'd get \$1000.

Q And did you, before you gave him his half of the money, did you deduct your expenses, the firm expenses?

A Yes. Curators were paid by a fee plus expenses. And so the expenses we took out first and then split the difference.

Q And if you could just give us a little idea of what these curator cases were about. What

exactly --

A Absent defendants who have left either their domicile or state of Louisiana, so you advertise does anybody know the whereabouts of John Doe, please call, you know, Robert G. Creely or whatever lawyer. And then you would file a note of evidence with the court, and then you would get paid when the curator case was over with.

Q Was this work that you or Mr. Creely did or was it something that was administratively done by an assistant in your office?

A It was usually -- bulk of it is done by a secretary.

Q I'm sorry, the work was done by your secretary?

A By a secretary.

Q By a secretary.

When Judge Porteous was appointed to the federal bench, was he in a position to send you any more curator cases?

A No, he was not.

Q Did the payments to Judge Porteous come to an end at that point?

A Yes.

Q During the time when he was on the state

bench and he was sending you the curator cases and you were sending him the money, did you have occasion to appear in his courtroom?

A Not very often, but I -- I had appeared from front of him.

Q Were you troubled by the fact that at a time when you were appearing in his courtroom, he was also asking you for cash?

A No, because a couple of cases I can recall I lost in front of him. I mean, I was never a -- any relationship between the curator cases and winning the case.

Q What did you think about the mere fact, though, that you were giving money to a judge who was sitting on a case in front of you?

A I was very uncomfortable with it.

Q Over time what is your best estimate of how much cash you gave Judge Porteous when he was on the state bench?

A Over time my best, not estimate but guesstimate would be something under 20,000 or around \$20,000 over a period of 10, 12 years, 15 years, I don't know.

Q And would that be based on an estimate that the value of the curator cases was about

\$40,000?

A Yes.

Q Did there come a time after Judge Porteous was appointed to the federal bench that you made an appearance in a case of Lifemark versus Liljeberg?

A Yes.

Q Was that case pending before Judge Porteous?

A Yes.

Q Was it a complex case?

A Yes.

Q The record shows you entered your appearance in September of 1996. Does that sound right?

A I can't recall, but it does -- I don't have any dispute as to the date.

Q The record also reflects that a trial was scheduled to begin before Judge Porteous, nonjury, in November 1996, about six weeks later. Does that sound correct?

A I presume so. I don't have any independent recollection one way or the other.

Q What was your fee arrangement in the case?

A I had 8 percent contingency contract with the plaintiffs, the Liljeberg brothers.

Q And you were representing the Liljebergs?

A Yes.

Q If the Liljebergs were successful, you would get 8 percent?

A Yes.

Q About how much was the case worth, 8 percent of what?

A Lifemark valued it someplace between 15 and 30 million. I figured my fee would be maybe \$500,000.

Q Could it have been as much as a million?

A I was hoping, it could have been.

Q And you were brought in at the same time as another counsel.

A Lenny Levenson?

Q Yes. Or did he come in earlier?

A He came in after I came in.

Q Oh, he came in after you came in?

A Yeah.

Q Was Mr. Levenson also a close friend of the judge's?

A They were friends. I don't know how to define the closeness between Porteous and Lenny Levenson.

Q Now, during the course of the Liljeberg

case and the trial, did you take any other cases in your office?

A Yes, but it was very limited because that's about all I did, was work on the Life -- Liljeberg case.

Q Was that about all you did for two years?

A It was a good portion of what I did for two years.

Q And because of the nature of your contingency fee, did you stand to recover any of that two years work if you lost the case?

A That's the perils of being a contingency fee lawyer. No cure, no pay.

Q So if you won, you stood to make 500,000 to a million; if you lost, you got nothing?

A That's right.

Q Do you recall a motion to recuse being filed in that case by Joe Mole on behalf of Lifemark?

A I know there was a motion to recuse, yes.

Q And were you present at the hearing of that recusal motion?

A I'm sure I was. I don't really -- yeah, I'm sure I was.

Q At any time during the recusal hearing,

did you reveal that you or your partner, Mr. Creely, had given cash to Judge Porteous of about \$20,000?

A No.

Q Did Judge Porteous at any time reveal that he had received cash from you and Mr. Creely?

A No.

Q During the latter part of the recusal hearing, Judge Porteous took issue with Mr. Mole for not doing his homework in suggesting that you and Mr. Levenson had contributed to his election campaign when, in fact, it was a Justice for All program for all judges running.

Do you recall that?

A Vaguely, I recall that there was some discussion with the judge and Joe Mole, yeah.

MR. SCHIFF: We've stipulated to the authenticity of the transcript. At this time I'd like to move it into evidence. The transcript of the recusal hearing.

CHAIRMAN MC CASKILL: Without objection the transcript will become part of the record.

(Exhibit 56 received.)

BY MR. SCHIFF:

Q If we could pull up on the screen some of the dialogue during that recusal hearing. Here the

court says, "you haven't offended me, but don't misstate, don't come up with a document that clearly shows well in excess of \$6700, \$6700 was some innuendo, that that means that they gave that money to me. If you would have checked your homework, you would have found that that was the justice" --

CHAIRMAN MC CASKILL: Counsel, I hate to interrupt you, but would you mind identifying this exhibit by exhibit number so the record will be clear, which exhibit number it is?

MR. SCHIFF: Certainly. Shall we make this Exhibit Number 1?

CHAIRMAN MC CASKILL: I believe it's previously been numbered.

MR. SCHIFF: Oh, it has? I'm sorry. 56, thank you. I stand corrected.

CHAIRMAN MC CASKILL: Thank you, Counsel Schiff. The record will show this is Exhibit Number 56.

BY MR. SCHIFF:

Q "If you would have checked your homework, you would have found that that was the Justice for All program for all judges in Jefferson Parish, but go ahead, I don't dispute that I received funding from lawyers."

Do you recall that discussion at the
recusal hearing?

A Yes.

MR. SCHIFF: Could we pull up the further
statement in that hearing, where the judge indicates
that was the only money he had received, from
Justice for All program?

THE WITNESS: I'm sorry, I was looking on
the screen.

BY MR. SCHIFF:

Q I'm asking counsel to pull something up.

While they look for that, let me ask you,
Mr. Amato, the statement that I just read to you,
"if you would have checked your homework, you would
have found that that was the Justice for All program
for all judges in Jefferson Parish, but go ahead, I
don't dispute that I received funding from lawyers."

Wasn't it misleading for Judge Porteous to
criticize the lawyers when he did not disclose he
received thousands of dollars in cash from you and
Mr. Creely?

A I think you'd have to direct your question
to Judge Porteous as opposed to me.

Q Well, in your view, Mr. Amato, don't you
think it was --

A Yes, in my view, yes.

Q Don't you think it was dishonest?

A Yes.

Q Did Judge Porteous go on to deny the motion to recuse?

A Yes, he did.

Q Now, he was aware that you and Creely had given him cash. Do you think he should have recused himself?

A Yes.

Q Do you think he should have disclosed it?

A Yes.

Q You were present at the hearing, Mr. Amato. Why didn't you disclose the facts of the payment of the cash to Judge Porteous?

A As I stated before, you know, I wasn't that strong. I just -- you know, I was there, I wasn't arguing the motion. The judge knew as much as I knew.

Q What did you think the consequences might be -- what did you think the consequences might be if it came out in public that you and Mr. Creely had for years been giving cash to Judge Porteous in connection with him assigning curatorships?

A Well, I think the consequences are

apparent. Here I am.

Q What did you think the consequences would have been at that time if you had disclosed the payment of the cash for the curators?

A That I would be disbarred, my law partner would be disbarred and that the judge would be sanctioned or defrocked, derobed by the judicial commission. At the time they were two of my best friends.

Q Have you ever given cash to other judges other than campaign contributions?

A No.

Q Directing your attention to on or about June 29, 1999, do you recall being on a fishing trip with Judge Porteous?

A Yes. But I don't know if that's the right date. I think it was in May or June of 1999 that we went fishing.

MR. SCHIFF: Could we pull up a copy of Mr. Amato's calendar. What exhibit --

THE WITNESS: I think it was miscopied someplace along the way. I think that's part May and part June, the calendar. But I recall going on a fishing trip with Mitch Martin and Ernie Alario on Mitch's boat, and it was during the week, and we

were fishing right off of Grand Isle and fished at night in that particular time of the year. Judge Porteous was on the trip.

BY MR. SCHIFF:

Q I don't know if you can see, Mr. Amato, from where you are. We pulled up on the screen a copy of your calendar.

A Right.

Q Now, it is two pages and it's marked June but you're saying that it may have been one page in June, one page from May?

A Right.

Q Both of these months in 1999, Mr. Amato?

A Yes. They were the calendar. It would have been miscopied.

Q Are you able to read on the monitor what you've written for the dates of the 29th and 30th?

A Yeah, I had breakfast with one client and I met with Tom and Mitch Martin, and we were fishing the night of the 29th and 30th. And I don't know if that was -- I know it was during the week because I went to work after we went fishing on the 30th. But I don't know if it was in May or June.

Q And was this a time when the Liljeberg case was awaiting decision by Judge Porteous?

A The case was over with. We were waiting for a decision, I think.

Q And during this fishing trip, can you discuss what happened between you and Judge Porteous regarding money?

A Yeah. We were standing on the front of Mitch Martin's boat, his rather large boat, and we were both drinking, the judge was not hysterical, but he was very upset that his son's wedding was coming up soon and that he didn't have enough money to put the kind of wedding on that he thought he should. I don't know if he was -- for the -- half the rehearsal party or whatever. But he had some -- some wedding-related reason why he needed some cash to go forward with the wedding plans.

Q What did you do as a result of that request for cash? How much did he ask for?

A A couple thousand dollars. I think I gave him \$2000 within a few days of that. That's the only time he ever asked me for money.

Q And did you and Mr. Creely share the cost?

A I don't know, I really don't recall how that came about.

Q Did you put the cash in an envelope?

A Yes.

Q And do you recall whether you gave the judge the cash or whether he sent his secretary to pick it up?

A I can't recall. I wouldn't doubt that Rhonda might have picked it up, but I don't doubt that I gave it to him.

Q So one way or another, he got the cash?

A Yes.

Q Mr. Amato, did the fact that you stood to make a lot of money on the Liljeberg case influence your willingness to give Judge Porteous the money he asked for on the June fishing trip?

A No.

Q I'm sorry?

A No.

Q If I could direct your attention to your deposition testimony. During the deposition I asked you, "Did the fact that you stood to make a lot of money on this case influence your willingness to give him the 2500 or 2000 he asked for?"

"Answer: Yes.

A Yes. I said that. But I think there was more to it than just that sentence.

Q Let me ask you now, Mr. Amato, did the fact that you stood to make a lot of money enter

your head when he asked you for the cash?

A It did, yes, it did.

Q At the recusal hearing, Judge Porteous stated, if we could pull this up as well, "I've always taken the position that if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off."

Do we have that?

Do you recall the judge saying that he would notify counsel and give them the opportunity to ask him to get off the case?

A I don't recall it, but I don't doubt that that's the transcript and that's what he said. I just don't recall.

Q After you gave him the 2000 or 2500 in cash while the case was under submission, did the judge notify opposing counsel?

A I don't think so. I'm --

Q I'm sorry, I can't hear you.

A I said I don't think so.

Q Let me -- we now, I think, have that other quote I wanted to refer you to from the recusal hearing, if we could pull it out on the screen as

well.

In this passage the judge in the recusal hearing states, "the first time I ran, 1984, I think is the only time when they gave me money."

In light of the fact, Mr. Amato, that you had been giving the judge thousands of dollars over the years, was that an honest statement?

A Yes. No, that was -- I'm sorry. Honest statement? No. That was probably an honest statement with regard to campaign contributions.

Q Was it misleading because he had received thousands of dollars not in campaign contributions --

A Yes.

Q -- but in secret cash?

A I would think it would be misleading, yes.

Q After Judge Porteous tried the case, how long did he keep it under advisement before he decided it?

A It was quite some period of time, a couple of years, maybe a little more.

Q During that time, did you ever advise counsel on the other side that you and Mr. Creely had given the judge a couple thousand dollars in cash during the pendency of the case?

A No.

Q I need you to speak a little louder.

A No.

Q To your knowledge, did Judge Porteous ever advise counsel for the other side about the cash while the case was awaiting a decision?

A Not that I know of.

Q And during the pendency of the case, while it was under submission, did you and Judge Porteous continue to have your lunches together?

A We continued to stay friends and have lunch, go fishing, whatever we usually did.

Q While the case was pending, the same Liljeberg case, did the firm of Amato and Creely pay for an anniversary party for Judge Porteous?

A For his law clerks, yes, we did.

Q That was his fifth anniversary on the federal bench?

A I think so. I think it was the fifth.

Q And how much did the firm contribute?

A I think it was something between 1000 and \$1500.

Q Did you ever advise counsel for the other side of the fact that your firm paid \$1500 for a party for Judge Porteous?

A No, I never -- I don't -- not that I know of, no.

Q To your knowledge, did Judge Porteous advise counsel for Lifemark of these facts?

A Not that I know of.

Q While the Liljeberg case was pending before Judge Porteous, do you recall a trip to Las Vegas with Judge Porteous?

A I didn't go to Las Vegas with Judge Porteous. I -- there was a bachelor party for his son in Las Vegas.

Q Did Bob Creely go on that trip?

A Yes.

Q And did Amato and Creely, as a law firm, cover Judge Porteous's expenses, hotel rooms, meals?

A I don't know how that was covered. But I wouldn't doubt that we didn't pay for some of it or all of it. I just don't know. I just -- I wasn't there. I don't know how the bills were paid. I just don't know.

Q If the records, credit card statements and others, indicate that some of the hotel rooms and meals were paid for by Mr. Creely or the firm, would you have any reason to doubt that?

A No, I wouldn't have any reason to doubt

it.

Q And this was also while the Liljeberg case was pending, was it not?

A Yes.

Q During the pendency of the Liljeberg case, did you ever have a conversation with Judge Porteous about the case outside the presence of other counsel?

A Yes.

Q And that's referred to as an ex parte contact?

A Well, I think there's ex parte contacts and there's ex parte contacts. I recall one conversation where he said you better prove your case not only to my satisfaction but to the 5th Circuit Court of Appeals' satisfaction.

And I recall a couple of occasions where we were at lunch or something, how you doing, getting ready, you better be ready.

Then after the case was over with. I asked him why we didn't get a judgment, until the judgment came, I wasn't going to get paid. He said he was working on it, he didn't have enough law clerks to go through all the records, in this not only complicated but convoluted, and it went over a

number of days and witnesses and, you know, exhibits and just -- just tons and tons of documents, I mean rooms full of documents, it seemed.

Q And did you ever disclose these conversations to the other counsel?

A I didn't feel that they were ex parte to the extent that they compromised the court in any way.

Q Why did the judge feel it was important to prove the case sufficiently for the Court of Appeals?

A Because the Liljebergs had a -- had a long line of unsuccessful litigation in federal court. Apparently, they were the spanking boys of the 5th Circuit. They had gone to the Supreme Court of the United States, on one of the federal judges and his failure to recuse himself in one of the leading cases. And they just -- they just couldn't win anything.

Q And Judge Porteous wanted to make sure that if he ruled in your favor, that the Court of Appeals would uphold his record?

A I think that was his intentions, yes.

Q And am I correct that ultimately the judge did rule in your favor?

A Yes.

Q And Lifemark appealed?

A Yes.

Q On appeal, did the Court of Appeals, in fact, overturn substantial portions of the judge's decision?

A I think they did a little of everything, affirmed some, reversed some, modified some. It's been, you know, a lot of years since I read that judgment.

Q The decision Judge Porteous made, though, in the Liljeberg case was a huge victory for you and your firm, wasn't it?

A It was a huge -- it was a victory. I mean, it was -- I worked hard on the case. I thought the case had a lot of merit. I thought the judge handled himself properly. I thought the judgment was correct. And I think to the day I die, that the 5th Circuit Court of Appeals was wrong.

Q And the 5th Circuit opinion was a big loss for your firm, wasn't it?

A Well, it didn't put us out of business, but I mean, it's like every contingency fee law firm. Feast or famine, you know. Six months out of the year, you have more money than I guess you

deserve, you pay your bills for the six months that you don't collect any fees. Yeah, it was a disappointment, but it didn't put us out of business.

Q It was more than a disappointment. It was potentially a half million to a million dollars, wasn't it?

A Yes.

Q Mr. Amato, are you currently licensed to practice law?

A No.

Q And why is that?

A I voluntarily resigned from the bar association in lieu of disciplinary action and disbarment.

MR. SCHIFF: Madam Chair, at this time I have no further questions.

CHAIRMAN MC CASKILL: Thank you, Congressman Schiff.

Professor Turley?

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good morning, Mr. Amato.

A Good morning, sir.

Q We've never met; correct?

A Correct.

Q I'm Jonathan Turley. I'm obviously representing the judge.

A Yes.

Q Mr. Amato, I'd like to ask you directly a simple question. Did Judge Porteous ever ask you directly for money when he was a state judge?

A No.

Q I'm afraid you are going to have to speak up.

A No.

Q I'm having trouble --

A No. Not as a state judge.

Q Thank you, sir.

In his 10 years as a state judge, did you ever directly and personally give him money, in your recollection?

A No.

Q I'd like to begin with your relationship with Judge Porteous. You first met when you were prosecutors; correct?

A Correct.

Q And that was around 1972?

A I would -- yeah, in that area, '72, '73.

Q So you've known him about 40 years or so?

A Getting close to it, yeah.

Q Now, as prosecutors, later private lawyers, you often had lunch with the judge; correct?

A Absolutely.

Q And when he became a state judge, you continued to have lunch with him; correct?

A Absolutely.

Q Did that -- I mean, were those basically the same lunches you always had because you were friends?

A Correct.

Q Now, isn't it true that it's common for judges and lawyers to have lunch together in Gretna?

A I think it's common every place in the United States that judges and lawyers meet for lunch either formally, at bar associations conventions, or bar luncheons, swearing-ins and informally for lunch.

Q And you've practiced outside Gretna; correct?

A I've had cases in other jurisdictions, yes.

Q And you've found the same tradition or habit of judges having lunches with lawyers?

A Yes. I can recall a time I had lunch with the judge and DA in a jail down in Plaquemines Parish, we ate at the jailhouse. They fixed lunch for us at the prison.

Q And that was -- that was a judge and a prosecutor you had a case in front of at that time or --

A That was a civil attorney.

Q Civil attorney.

Were the involved in any litigation with you at that time?

A Yeah. I mean, I was in his court, it got to be lunchtime, if you want to eat meatballs and spaghetti at the jail, Jake, come on, let's go.

Q Now, do you recall in a restaurant -- do you recall a restaurant called the Courthouse Cafe?

A Yeah, that was -- it used to be called Whitesides, but I know the Courthouse Cafe quite well.

Q Do you recall there was a table set aside for lawyers and judges at the cafe?

A Yes.

Q Was that because it was so regular that they just set aside a table?

A Yeah, everybody sat at the same table and

ate lunch for years and years and years.

Q Did they try to hide the table behind a screen or anything?

A It was the first table as you walked in the door.

Q And did you think that lawyers didn't want to be seen at the table with judges or vice versa?

A No.

Q And you often had lunch with other judges besides Judge Porteous?

A Yes, of course.

Q Judges like Judge Pitre; correct?

A Yes.

Q Judge McManus?

A Yes.

Q Judge Bengel?

A Yes.

Q There were two judges named Collins, weren't there?

A There was a Walter Collins and a Lionel Collins.

Q But you had lunch with both of them; right?

A Yes. Went fishing with Judge Walter Collins.

Q Has anyone ever said to you that it was unethical for you to have lunch with those judges?

A As far as I know, it was never unethical for me to have lunch with any judge.

Q Do you know of any state rule that says you couldn't have lunch and buy lunch for a judge?

A No. But I understand that they changed some of the rules lately, so --

Q Let's talk about that. What's your understanding of the current rule, the one that they just put together about a year ago?

A That you can't spend more than \$50 on lunch for any public official.

Q So as long as it's below \$50, you can go ahead and have lunch?

A Yes.

Q Were most of these lunches below \$50 with the judge?

A I would think so.

Q How expensive is the Courthouse Cafe?

A Courthouse Cafe was 4, 5, \$6 for a plate lunch.

Q And you told Mr. Schiff that occasionally Judge Porteous would buy lunch?

A Yes.

Q And you just didn't -- you said you didn't have a clear memory, just remember occasionally he would buy lunch?

A Yeah, I mean, if -- this many years, he bought lunch. I know he brought food to the houseboat, I know he brought whiskey to the houseboat. You know, I know that.

Q Now, Mr. Schiff said once or twice, and you said, well, sure, once or twice, but it could have been more; correct?

A Sure.

Q Do you have no clear recollection?

A No, I don't.

Q You just remember sometimes he would buy lunch?

A Yeah. And sometimes we went to lunch and I didn't -- somebody else bought lunch.

Q Is this one of those things when they're at lunch, someone throws down a credit card and just says "I'll take it"?

A Yeah.

Q And it's one of those things that everyone is real slow on their wallet or people just tended to buy lunch whenever they could?

A Sometimes we took turns, sometimes it

was -- you know, somebody was slow on their reach, we kept an eye out for who is going to the bathroom when the check came and things like that.

Q I've been to those lunches.

Now, as far as you know, there was no prohibition on buying lunch; correct?

A To this day, there's no prohibition that I know of.

Q Now, try to give us an understanding about Gretna. I know that Jefferson Parish is fairly large. But the Gretna legal community, it's fairly small; correct?

A Yes.

Q And many of the lawyers and judges there know each other socially; correct?

A Of course.

Q In fact, many of them went to school together; correct?

A Of course.

Q In fact, it wasn't uncommon for lawyers to have gone to high school with judges; correct?

A Been to high school with judges, college and law school.

Q Did you go to school with some judges?

A Yes.

Q Do you remember who they were?

A Well, I went to Jesuit High School, and there's a whole bunch of New Orleans judges who went to Jesuit High School about the same time as I did. I'm sure if I sat down and thought about it, I mean off the top of my head, no.

Q Did you ever occasionally go in front of those judges?

A Of course.

Q And they didn't recuse themselves, did they?

A No, they didn't recuse themselves.

Q In fact, in Gretna, isn't it true that recusals are pretty rare in Gretna?

A I don't think I've ever seen one the whole time I was in Gretna.

Q Not one. How long were you in Gretna practicing?

A I started in 1968 in the DA's office, and I ended the practice of law in January of 2010. And I don't think I've ever saw a recusal filed, changes of venue and things like that but never a recusal.

Q In a place like Gretna, if you ever started to recuse yourself when a friend was in court, do you think a judge would get much done in

Gretna?

A I think all they would be hearing would be
recusal motions.

Q And you went before some of the judges you
bought lunch for; right?

A Uh-huh, yes.

Q They didn't recuse themselves but you said
you didn't see a recusal; correct?

A No, right.

Q Wasn't it common for lawyers and judges to
go on hunting trips together in Louisiana?

A Yes.

Q Hunting -- I didn't mean to interrupt you,
I'm sorry.

A Hunting and fishing, yes.

Q And hunting and fishing are big things in
Louisiana; correct?

A Yes, and football.

Q And football, yeah. But that's a main
form of recreation, hunting and fishing?

A It has a lot to do with the culture in
Louisiana.

Q And often judges would accompany lawyers
on these trips?

A Yes.

Q And you were mentioning that on some of these trips, there was a deal that the 10th person would get a free trip; correct?

A Yeah, I have some recollection -- recollection of that, that if you had 10 people going on a hunting trip to Mexico, the 11th ticket would be free. I don't know the mechanics of how it worked, but I don't know if the judge got a free ticket or not. I just don't know.

Q So he could have been one -- he could have been the free ticket on those trips?

A Right.

Q And you talk about this trip on the houseboat, do you recall, with Mr. Schiff, I think it was a houseboat trip?

A We went on many houseboat trips.

Q How about one with Judge Porteous? Do you remember going on a houseboat trip with Judge Porteous?

A Well, it was more of a barge.

Q More a barge?

A A barge. You know, I know everybody has this view of a fancy houseboat, you know. It was an old pushboat converted into a camp. And it was moored at Delacroix Island for years.

Q So this wasn't very luxurious?

A No, it was not very luxurious at all.

Q Now, you just mentioned to Mr. Schiff that it was common for Judge Porteous to bring food or alcohol on these trips; correct?

A Correct.

Q In fact, didn't you testify previously that he would often help out, for example, on the cleanup of these trips?

A He was -- he was a good hand. He wasn't like most people who went that just thought you should wait on them hand and foot. Tom pitched in. He liked to cook, he helped clean up. He was a regular guy.

Q In fact, you said he was the only guy you could remember helping clean up?

A He was the only dependable guy, dependable.

Q To do kitchen duty?

A To do kitchen duty.

Q Would you say that you were friends with -- when you were practicing with more than half the judges in Gretna?

A I would say I was friends with all of the judges in Gretna.

Q And that you would socialize with all of them?

A Yes, to some extent.

Q Tell me, Mr. Amato, I'm going to just ask you directly. Did you buy lunches for Judge Porteous to bribe him?

A No.

Q Did you buy lunches for Judge Porteous to influence him?

A I don't think I could influence him.

Q Why not?

A Because I -- I've worked with him, I knew him. I tried cases with him. I tried cases against him. I tried cases before him. I always felt he was always going to do the right thing.

Q To this day, do you believe that?

A Yes.

Q And let me ask you, the -- do you think that he has ever given you any favors because of your friendship?

A I can remember one continuance when I was sick. That's the only thing that I can recall him going out of his way, a case that was set, and I just -- the night before I just -- just didn't feel well. And I sent somebody to the courthouse, and he

continued the case. That's the only thing I can recall.

Q And a continuance is just asking for a delay; right?

A Right.

Q In some proceeding?

A Right.

Q And most judges tend to give continuances when you're sick, don't they?

A Yes.

Q And Judge Porteous was known as a judge that was fairly solicitous for that type of thing, wasn't he?

A He was the hit of the courthouse. He had coffee, he would smoke cigarettes. You know, it was just -- it was a nice way to practice law.

Q And lawyers would often go to his office for coffee, didn't they?

A Go get coffee, go find out what was going on, go get the latest gossip, you know, how did you do on last week's hunting trip or fishing trip or golf trip or whatever you did. I mean, it was like the clubhouse.

Q And did you feel that Judge Porteous was a fair judge when he was a state judge?

A I did.

Q Did you ever know him to favor a friend in court, in a ruling?

A No.

Q You previously described him as compassionate. Why?

A Over the years I'd seen him do some stuff that -- you know, he kind of went out of his way to feel for the common folk, you know.

Q Now, you had known him you said for about 40 years; correct?

A Yes.

Q Were you a crony of his? Would you consider yourself a crony?

A I consider myself one of his best friends. He was one of my best friends. I don't consider that cronyism.

Q So the House members referred to you and Mr. Creely as cronies. Do you feel that that's a fair description of who you were?

A I sure hope not.

Q How about those people that came to his office for coffee? Did he have a lot of cronies coming to the office for coffee?

A No, it was mostly, you know, lawyers.

Q Now, you mentioned that you were friends with all of the judges in Gretna.

A Right.

Q Did you receive curatorships from other judges over a time?

A Yes.

Q And some of them being your friends?

A Yes.

Q Do you know of any rule that barred the awarding of curatorships to friends in Gretna?

A Not that I know of.

Q In fact, wasn't it very standard for judges to award curatorships to friends?

A Yes. Yes.

Q And you gave campaign contributions to many of the judges in Gretna; correct?

A I think I gave campaign contributions to every politician in Jefferson Parish.

Q So some of those people that gave you curatorships probably you gave campaign contributions to; correct?

A Absolutely.

Q There's nothing wrong with that; right?

A Not as far as I know.

Q Now, you, for example, were friends with

Judge Giacobbe; correct?

A I went to high school with George, Judge Giacobbe.

Q He's a good judge; correct?

A As far as I know, he's a good judge. I've never heard any complaints about him, never had any complaints with him.

Q And he gave you campaign contributions; correct? I'm sorry, you gave him campaign contributions; correct?

A I'm sure I did. I just don't recall. As I said, we gave campaign contributions to all the judges whenever they ran.

Q And Judge Giacobbe gave you appointments to sit ad hoc as a judge sometimes, didn't he?

A Yeah, over a period of time, about two or three times a year, he'd call me and said what are you doing next week, I'm going out of town, would you mind sitting, it's criminal week and I don't trust a lot of people with my criminal docket.

And I would go sit for a day or two, I think once or three or four days. And the Supreme Court appointed me as judge ad hoc for first parish court, which is a misdemeanor court. I would sit for him and handle his docket and go on my way.

Q And your impression, that he wanted you because he knew you were an experienced lawyer; correct?

A Yes.

Q He knew you'd do a good job; correct?

A That's what he told me.

Q And sometimes judges would give friends curatorships because they knew they would do a good job; correct?

A On -- yes.

Q Because some lawyers don't do good jobs on curatorships; correct?

A It's pretty hard to mess up a curatorship.

Q But sometimes it happens; right?

A It happens, yes, when there are domestic issues, you know, that people are -- you know, suddenly reappear after being -- disappeared for years, and saying they didn't get proper notification. Yeah, they can be a pain.

Q Because with curatorships, you have to send out a notice; isn't that right?

A You send out a notice, certified letter and ad hocs.

Q Did you ever hear of a case where lawyers sat on curatorships and didn't send out the notice?

A Many.

Q That causes a problem for the court, doesn't it?

A It does.

Q And you bought Judge Giacobbe lunches on occasions; right?

A I don't recall ever just having lunch with George, but I recall having lunches with his staff and George and I bought.

Q And you bought?

A Yeah.

Q And you would see him socially; correct?

A Would I seem social?

Q Yes.

A I hope so.

Q But there was nothing untoward or inappropriate with him assigning you as an ad hoc judge, was there?

A Not that I know of.

Q Has anyone ever suggested that?

A No.

Q And it's pretty well known you guys were friends, wasn't it?

A Yeah, for probably 50 years as opposed to only 40 we were friends.

Q Anyone ever complain about you being an ad hoc judge, and how you did?

A Not that I know of. Not that I know of.

Q Now, let's talk about these curatorships. These curatorships actually named Robert Creely, did they not?

A Yes.

Q Mr. Creely would do -- I mean, Mr. Creely and the firm would do a good job on curatorships, didn't they?

A I don't think we ever had any complaints, so I guess we did a good job.

Q Do you remember a single curatorship that was a problem coming out of your firm?

A No.

Q You have a pretty good record; is that correct?

A Yes.

Q Now, you and Mr. Creely often worked on separate things or types of cases; correct?

A Very rarely did we ever work together, if ever.

Q If I recall, during much of this period Mr. Creely was doing divorce cases; is that right?

A Our practice evolved over the years into

different areas of the law. At different times we did different types of law. At one point in time, he did a lot of domestic work. I didn't.

Q Did you ever sit down with Judge Porteous and explain how your firm was structured as a partnership?

A No.

Q Did you ever sit down with Judge Porteous and lay out how proceeds were divided in your firm?

A No.

Q Is there any reason why Judge Porteous would know what type of partnership you had?

A No, other than the obvious, it was Amato and Creely, and we were only two named partners. I mean, he could make his own deductions.

Q I know he knew you were partners, but I'm talking about the sort of nuts and bolts of the partnership.

A No.

Q Isn't it true, in your experience, that there's a lot of different types of partnerships for firms?

A As much as an evil mind can think of, there are different types of partnerships, yes.

Q And isn't it true that some partnerships,

the partners largely keep what they bring in, while others they divide them 50/50? Is that your experience?

A Well, my experience has been limited to Robert Creely. So it's fair to say that yes, I know of partnerships that exist on the named partner gets 20 percent, the nonnamed partners get something and your draw is based upon your income and things like that.

But firsthand knowledge, no, because we had a pure 50/50 partnership.

Q Is there any way, for example, the Bryan Cave attorneys over here, would there be any way for you to know how they divide up their income at Bryan Cave?

A I know the older guy is supposed to get more money, but other than that, no.

(Laughter.)

Q You just can't make assumptions about that type of thing?

A No, I can't. It depends on who is the rainmaker, too. So that might be related to somebody could bring a lot of business to the firm, I don't know.

Q And by "rainmaker," you mean there's a

partner that tends to bring in more than others?

A That's right.

Q In terms of business?

A Yeah.

Q Sometimes they will get more, correct, of the money?

A Yes.

Q Now, by the way, I did not ask, you've been talking for a while, if you need any water or anything.

A You know, I think I could use a glass of water. As long as it's not a half-hour break.

Q These lights are pretty intense.

A Thank you.

Q Now, when you were -- before this controversy, you didn't have any specific recollection of how many curatorships came through your firm, did you?

A I had no idea.

Q And you previously said that Judge Porteous occasionally called about the curatorships; correct?

A Not to me, but I know that he would call.

Q So you were not personally involved in those calls?

A No, I was not.

Q And you weren't personally present for those calls?

A No.

Q So you don't have any actual knowledge of what was discussed on the phone?

A No, I -- I was not.

Q Let me ask you, the way curatorships work, if a judge wanted to quickly find out how many curatorships were given to this lawyer as opposed to that lawyer, wouldn't the faster way just be to call the firm, in your experience?

A I don't have any experience in how to find that out. I just -- you know.

Q Fair enough. You stated today that your understanding of the relationship with this money and curatorships came from a single conversation with Bob Creely; correct?

A That's correct.

Q And that one comment is what you have recalled as the basis for that connection; correct?

A Yes.

Q And you've testified that occasionally Mr. Creely would come in and ask you for cash for Judge Porteous; is that correct?

A Yes.

Q And he would say he was going to make a gift to Judge Porteous?

A Yes.

Q But, you know, you never knew exactly why he chose a particular time for that gift; right?

A No.

Q He would just come in and say I'm going to give a little money to Judge Porteous?

A Yes.

Q And as far as you know, there's no records of how much money you two gave Judge Porteous over decades of friendship, was there?

A There's no records.

Q In fact, when you testified in the 5th Circuit, didn't you testify that you didn't have a clear memory on how much money you may have given to Judge Porteous?

A That's correct.

Q And you still don't have a clear memory; correct?

A No, I still don't have a clear recollection of how much money we gave to Judge Porteous.

Q Because this was not only a long time ago,

it was a long period of time, wasn't it?

A Yes.

Q Now, during the 5th Circuit testimony, you were given the \$10,000 figure by your questioner during that testimony, weren't you? Didn't someone give you the \$10,000 figure in questions?

A I don't recall.

Q And you previously said that it may have been 10,000 or less; right? Didn't you previously say that in testimony?

A I could have. I -- I -- I really just don't know.

Q When you say you don't know, you just don't know if it was 10,000, less or more?

A Right.

Q Do you recall the House giving you the figure of \$20,000?

A I think that would be Deputy Agent Horner came up with how many curator cases they were and that it came up to 200 and that the curators average some number and half of that would be something around \$20,000.

Q So let me get this straight. You were -- at that point, you didn't know how many curatorships your firm handled; right?

A No, I didn't know.

Q And you didn't know what the value of those curatorships were; right?

A No.

Q And so you were given this number of curatorships and told this is what their likely value is; correct?

A Yes.

Q And then you took that figure and said, you know, you probably gave back half of this; right?

A Yes.

Q And that's how this \$20,000 figure came up; correct?

A Yes.

Q And you had never suggested that on your own before you were questioned; righted?

A No. I just didn't know.

Q And all of this curatorship money, I want to make sure, that is all confined to Judge Porteous's time as a state judge; correct?

A Correct.

Q Because as a federal judge, you have no role with curatorships; right?

A That's right.

Q In fact, the only money you recall ever going to Judge Porteous was this wedding gift; right?

A Correct.

Q And before I get to that, I want to go back to something that you were answering with Congressman Schiff. You mentioned that -- at one point you said this is going to turn out badly or something along those lines; right?

A Correct, I did.

Q Was that with regard to the curatorships?

A Yes.

Q But then you said something interesting. You said but I was thinking more of an ethical than a criminal issue; correct?

A Correct.

Q In fact, you were thinking that the money was connected to curatorships that would raise an ethical question; correct?

A Correct.

Q And that's because that's what you remember Bob Creely mentioning?

A Right.

Q You've given gifts to other judges in Gretna, haven't you, over the years?

A Yes.

Q In fact, many lawyers give gifts to judges; correct?

A Wedding presents, Christmas presents.

Q Let's go to that wedding gift in 2009. You originally said that you thought that that scene with you and the judge on the boat occurred June 28th, 1999; correct?

A Yeah, I know it was either May or June. It was a weekday that we went fishing.

Q It's some period in there, you're saying?

A I think my calendar was copied by somebody along the path of getting here.

Q And you two were just sitting out at night drinking as friends; right?

A We were standing up as friends drinking.

Q And it was late at night?

A Yes. And I never seen him more distraught as long as I've known him, and I don't think he would have ever asked me for anything if it wasn't of significant importance to him.

Q This was not something that you would think he would normally do?

A He never did it to me before.

Q He seemed like he was under a lot of

stress?

A He did.

Q And do you think he was talking to you to try to get this off his chest, in part?

A I'm sure he did.

Q Because this was his son's wedding; correct?

A Correct.

Q And he was having trouble paying for it?

A Or paying for his portion of it. That's what he told me.

Q Didn't he mention that the reason he was distressed is because there had been unexpected costs with his son's wedding?

A I'm sure he told me something like that.

Q Now, did you give him that money as a bribe?

A No.

Q Did you give him that money as a kickback for favors?

A No.

Q Did you think that money would influence him in the Lifemark case?

A No.

Q And you knew his son, Timmy, didn't you?

A I knew all of his children.

Q Didn't Timmy call you Uncle Jake?

A Yes, and he kissed me when he saw me on the cheek, affection.

Q Now, by the way, you gave this wedding gift three years after the recusal, it would be; is that correct?

A Correct.

Q And it was just pending for a long time for final resolution; is that correct?

A Correct.

Q And you never thought it would have an impact on that decision, did you?

A No, I didn't think it was going to have an impact on his decision one way or the other.

Q You thought he was going to decide on the basis of the law?

A And the facts, yes.

Q I'm going to be referring to Exhibit 56, which is the same exhibit we've been working off of. I'm sorry. It's 446. Congressman Schiff had put a flash -- quote on the screen, and the quote was -- and I will read it to you again, that Congressman Schiff said -- first of all, he starts off by telling you "that wasn't my question," and then you

were told:

"Question: Did the fact that you stood to make a lot of money on this case influence your willingness to give him the" --

CHAIRMAN MC CASKILL: Professor, I don't believe that exhibit is in evidence. Would you like to offer it?

MR. TURLEY: I'm sorry. I thought it was moved in. Can I have this page moved into evidence at this time?

CHAIRMAN MC CASKILL: This is not the deposition? This is a different document; correct?

MR. TURLEY: This is a page from the Senate deposition of Jake Amato.

CHAIRMAN MC CASKILL: Is there some confusion about the number of the exhibit on the Senate deposition?

MR. TURLEY: I'm not too sure if we have confusion on the numbers.

CHAIRMAN MC CASKILL: In the previous record, we indicated that was Exhibit Number 56, and now you've referred to it as Exhibit Number 446. I want to make sure for the rest of the Senate that the record is clear.

MR. TURLEY: Yes, Madam Chairman. I'm

confused as well. Exhibit 56 was the recusal hearing, and this is the deposition.

CHAIRMAN MC CASKILL: That is Exhibit Number 446?

MR. TURLEY: Yes.

CHAIRMAN MC CASKILL: Is there any objection to Exhibit 446 being admitted into evidence?

MR. SCHIFF: There is no objection, but we had moved, however, earlier to introduce the entire deposition transcript of this witness. Mr. Turley opposed that motion. We would ask that the entire transcript, not just a single page, be admitted into the record as well.

CHAIRMAN MC CASKILL: Mr. Turley?

MR. TURLEY: We have no objection to moving it in.

CHAIRMAN MC CASKILL: The entire deposition?

MR. TURLEY: Yes, ma'am.

CHAIRMAN MC CASKILL: Exhibit 446, which is the Senate deposition of Mr. Amato, will be admitted into the record.

(Exhibit 446 received.)

CHAIRMAN MC CASKILL: You may continue.

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q I'm going to go back to this page 97. Mr. Schiff had brought this up, I believe. So in the deposition, Congressman Schiff said:

"Question: That wasn't my question. Did the fact that you stood to make a lot of money on this case influence your willingness to give him the "2,500 or the" "2,000 he asked for?"

Do you see that question?

A Yes.

Q You said "yes," but you stopped and said there is more, is that correct, when you were speaking with Mr. Schiff?

A I don't see it on the page, but I don't doubt it.

Q I'm going to direct your attention to just above it to see if this is what you might have been thinking of. If you look just a few lines above, the previous question, they asked if this was once again related to Lifemark. And you said "the case entered into my mind, and it did, I gave it a great deal of consideration not to do it, and I wish I wouldn't have" had, but -- and here's the thing I was going to ask you about -- "I did it more out of

friendship and feeling sorry for the poor, broke-down," and you were interrupted at that point; correct?

A Yes.

Q Let's just clear it up right now. You gave a wedding gift out of friendship; correct?

A Yes, and with the reservation that he was a federal judge.

Q But you had stated here that your primary reason was that you had felt sorry for him and he was a friend; correct?

A Correct.

Q Is that still your testimony?

A Yes.

Q Let's talk about the Lifemark case. Actually, I want to ask you one last question. Didn't you and Mr. Creely operate largely on a cash basis at the firm, that you would withdraw cash from the firm?

A We would take a draw and also got a check. At the end of the year, we would balance out.

Q But you would cash checks and then use that cash for your own purposes?

A Right.

Q Let me ask you about Lifemark. Were you

asked to join the Lifemark case because you were a friend of Judge Porteous?

A I don't know how I got to be asked, but I never have taken a case because of friendships with any of the judges. I only took the case because I thought it was a case that was winnable and deserved some attention to make it, to look at its shape. It had been all over the federal courthouse and battered back and forth. And I liked the Liljeberg brothers.

Q These brothers were a family of pharmacists; is that correct?

A Yes. It was husband/wife, husband/wife, children. They had a pharmacy in Gretna and got a certificate of need from the state and built a hospital pharmacy for Lifemark.

Q Did you consider this to be a David and Goliath case between your clients and this huge corporation?

A I would consider it David and Goliath plus probably every law firm in Texas.

Q Every law firm you mean representing the corporation?

A Right. The Liljebergs couldn't hire any lawyers because all the lawyers in New Orleans were

somehow connected with Tenet.

Q So the corporation went and basically scooped up most of the lawyers in the area?

A They had enough business that every big law firm had a piece. So nobody could have -- everybody had a conflict. So they couldn't get, you know -- the silk-stocking law firms, the 100-man law firms. So we put together a group of Don Richard, the former prosecutor, Doug Draper, a bankruptcy lawyer, myself, Lenny Levenson, and one other guy. It escapes me now, a senior moment.

Q That's okay.

When you took the Lifemark case, you were already an experienced lawyer, were you not?

A I sure hope so after 30-some years.

Q You had done your share of trial work, hadn't you?

A I've probably tried 150 cases, jury trials and non-jury trials.

Q Cases like this one that you're going to litigate at trial?

A I went to the Fifth Circuit Court of Appeals a number of times and was always head-slapped.

Q And you took this case on contingency;

right?

A That's correct.

Q Now, taking a case on contingency, you said, is a real risk; right?

A Yes.

Q So you both have an investment in the case not just in terms of fees but also some costs; correct?

A They were paying all the costs as we went along, but I really didn't have any costs.

Q And did it concern you in going up against this huge corporation, that they had more money and resources than you did?

A They ran us around the lawn a number of times. It was mammoth, the things that went on in that trial, not only in that trial, but I was thinking last night that they had 10 or 12 other lawsuits that they filed in state court along the way, you know, just to divert us from the main course of action.

Q So there was not just one case; there were multiple cases?

A There was one big case and multiples of cases where they fired one of the Liljeberg's daughter from the hospital, and then they tried to

get them evicted from the hospital because the nurse couldn't find the drug in the right place. It just went on and on and on.

Q And when you say they went after this daughter, the attorneys for the corporation targeted the daughter?

A Correct.

Q Why would they do something like that?

A Because they did everything they could to break the Liljebergs. They absolutely did everything in the world to break the Liljebergs, including stealing drugs, mischarting, you know, hoarding drugs, not paying them for their contract. It just went on and on and on.

Q And when you said that they did a lot of filings, that was a part of their strategy, to run you around the court a lot?

A I would think that that's a part of the strategy, yes.

Q And did they often try to delay the case in hopes that you would go away?

A Well, if you knew my clients, they were never going away. This was a -- this was their life.

Q But did you see the -- I've been saying

Lifemark, but isn't this case really about Tenet healthcare?

A Lifemark was the original owners of the hospital or the owners of the right to the hospital, and then Tenet came along and bought whatever rights Lifemark had. Lo and behold, Lifemark didn't own the hospital. It was -- the Liljebergs owned the hospital with a lease to Lifemark. So I guess that started the war with Tenet when they finally woke up one day and found out they didn't own the hospital. So from then on, it was continuous battles.

Q And the corporation wanted that hospital; correct?

A They wanted ownership of that hospital irrespective of their lease obligations, yes.

Q And there were literally hundreds of millions of dollars potentially at stake, weren't there?

A Not only the hospital, but there was real estate involved, parking lots, servitudes, you name it.

Q When you first got this case, did you immediately just take the case, or did you take time to look at it?

A I took time to look at it. I mean, I knew

it was going to be a big commitment. I knew what I had to do. I had to convince myself that it was a case that could be won and that it was worth the investment, time, and effort to win it.

Q Now, I tell you, to an outside lawyer it seemed like a pretty complex case.

Is that how you viewed it?

A Every case I handled is a complex case. It depends how much effort you want to put in and how much you want to do for your client.

Q But did this case turn on Louisiana law and how it handled these issues?

A Yes, it did.

Q And what was the specific -- I mean, the Louisiana law in this case, would you say it's different than the law you find in a lot of other states?

A I would think it was, yes.

Q Other states like Texas, for example?

A Yes.

Q I want to go back to the fact that you had mentioned that the Lifemark attorneys would file a lot of motions in your view as a strategy; correct?

A And lawsuits, not just motions but then other lawsuits in state court.

Q So they would spin off both lawsuits and motions?

A Right.

Q And was it your view that they also tried to delay things in your case through a lot of motions?

A I don't think they were in any rush to judgment.

Q Why would a big corporation as a defendant want to delay a case like yours?

A It's cheaper to pay attorney's fees than it is to pay a judgment.

Q And isn't it true sometimes the plaintiffs will go away? Not your clients, but sometimes plaintiffs will drop litigation?

A Sometimes they die. Sometimes they just have had enough.

Q Because your clients were actually paying costs. So there were costs coming from your client as it went on; right?

A Right.

Q Now, you earlier testified that you saw Lifemark as trying to, quote, steal the rights of your clients; right?

A Correct.

Q Can you explain why you viewed this as something akin to theft?

A Well, because all the executives who testified who worked for Lifemark, they said they structured the deal to eventually wind up with the hospital, because they controlled the Liljebergs' income, both from how they paid the pharmacy fees and how they paid rent for the office building that they were ride to build in order to accommodate doctors who had privileges at St. Jude.

And so when the lease came up on the building that was overbuilt and wasted millions of dollars on other foundations -- it's complicated, but these executives testified our program at Lifemark was to steal the hospital and to do whatever we could do to hurt the Liljebergs. It was never contradicted.

And one of the ways they would do it was -- Liljebergs paid per dosage of medicine, and the way they would do it is if Tenet bought an aspirin for \$1, that's all they would pay the Liljebergs. The Liljebergs had inventory, had staff and had to deliver it and all the other things. They said we're only going to pay you a dollar for the aspirin, the wholesale price for the aspirin,

not the wholesale price plus the cost, we're not going to do it. So every month, they shorted the Liljebergs 50-, 80-, \$100,000.

Q And these were the attorneys for the corporation were doing this?

A I think it was Deborah Keel, who was the mastermind of the whole scheme.

Q You mentioned you took a while to decide to take this case. How long do you think it took you to study the case and decide to take it?

A A couple months, because I wanted to get everybody together a couple of times. I wanted to see the smoking gun. I wanted to look at all the exhibits. I wanted to know the history. I wanted to know more than just here's a case, go to work.

Q Now, do you recollect how many judges were in the case or assigned to the case before Judge Porteous received the case?

A No, I didn't have any knowledge of that.

Q I'm going to show you a demonstrative and see if it might help you. Would it surprise you to learn that there were 13 assignments of judges?

A It wouldn't surprise me in the least.

Q Do you think this was just by accident, or do you think that was a part of the motions practice

that you were talking about?

A I can't answer that. I know one of the judges died.

Q Right. The one right before Judge Porteous; correct?

A Right. I don't think it was Judge Sear who died.

Q I know one of them died.

A Right.

Q According to your House testimony, didn't Judge Porteous make it clear that he was going to stop this case bouncing from court to court?

A I don't recall the testimony, but I think he made it clear that he was going to take the bull by the horns and end this litigation.

Q And was that consistent with your experience of the judge as a state judge, that he tended to be a judge that got cases resolved and moved the docket?

A Yeah. He was probably one of the most capable guys I've ever known.

Q He's the type of judge that wouldn't like to see something like this?

A You're going to have to ask him that. I can't answer that.

Q You had talked with Mr. Schiff about a warning the judge gave you. You had to prove your case in front of him; correct?

A Correct.

Q In your testimony in the deposition that we just moved into evidence, there came a time when Mr. Schiff asked you if that was just because you were worried about being reversed. He just asked you that question again. But in the House deposition, when he was asked "did he just tell you that because of fear of reversal," you said "no."

Do you recall saying no to that?

A No, but I wouldn't doubt that I said no.

Q Why do you think the judge was saying you better prove your case in my courtroom?

A What I think he was telling me is I better prove my case, not only to his satisfaction but also to the Fifth Circuit's satisfaction, that he wasn't going to just rule in my favor because it was me.

Q Don't count on our friendship, basically?

A Absolutely, don't count on it.

Q Mr. Schiff refers to that as an ex parte communication. Do you view a brief conversation like that as a serious ex parte communication?

A No. I considered it just general talk,

not about any specifics as to the case itself. It's not like I'm on my hands and knees begging him to rule for me without opposing counsel there.

Q You never discussed the merits in an ex parte communication with the judge, did you?

A No, I never did.

Q And he never gave you a head's up about what his decision was going to be, did he, before it came down?

A No, he never gave me a head's up, but I had the feeling he was leaning towards us.

Q That's because of how -- you mean during the trial?

A Because I knew him. I knew what he wanted to hear in the trial because of our experience together, and I knew what I was proving. Some of the witnesses for Tenet were just incredible. In the transcript, I think the judge called an expert from one of the big California schools who tried to do a review of the pharmacy, that the way he had to test to review the pharmacy, nobody could ever pass the test. He was saying it to just get the Liljebergs kicked out of the pharmacy, and I think the judge called it that way from the bench.

Q And did you feel you proved the case?

A I know I proved the case.

Q When he ruled in your favor, it also meant that he ruled against Gardner's position; correct?

A Yes.

Q So is that because you were just a better friend of his than Gardner's?

A I don't think so.

Q Your clients turned down an offer from Lifemark, didn't they?

A I don't know of any offer that they -- any reasonable offer that they made to us. All I know is that Don Gardner was running his mouth off for about -- you know, I can get you 15, \$30 million or something. I said Don, we would be more than happy to talk, but here are the conditions.

And I wrote Joe Mole a letter saying that all communications with regard to settlement will be in writing, will be done through Don Richard, and we will be more than happy to discuss it, because over the years of not only prior to my term as being the attorney but in prior dealings with Lifemark and Tenet, they were not trustworthy.

So we didn't feel that we could be put in a position where he said/she said. If it's in writing, we will respond in writing. We will

consider it, you know.

Q And did you get the feeling that Gardner was sent to you to raise this possibility of a settlement?

A I don't know why he was sent to me, but probably.

Q And he said that Lifemark might be willing to settle it for as much as 30 million?

A No. It's hard for me to put a number on it, but according to him, they were talking serious numbers. I said Don, then do this in writing, get it from Joe Mole to Don Richard.

Q And ultimately, Judge Porteous wrote a 100-page decision, did he not?

A I'm sure. It was quite lengthy. I don't --

Q And he generally ruled in your favor, but he ruled against you in some parts, didn't he?

A I can't -- I'm sure he did. It's been a bad memory.

Q Well, when The Court of Appeals reversed him in part, but then they upheld him in part; correct? Do you recall that?

A I think so, yes.

Q And that panel was composed of all Texas

judges; correct?

A Yes.

Q Did you feel those judges understood Louisiana law in this case?

A I hope they did. I don't know what they -- I don't know what they did.

Q So did you feel that they got it right on the Fifth Circuit?

A No.

Q You just thought they were wrong on Louisiana law?

A Yes.

Q I'm going to talk about the recusal hearing. I promise you, I'm getting to the end. I know this is a tiring process.

Earlier, you spoke about the recusal hearing. Do you remember Mr. Mole saying that he was aware of your very, very close relationship with the judge in that hearing?

A I'm sure he said something to that effect. It was no secret that we were friends.

Q At the time of the recusal hearing, you had never yourself personally given money to the judge; correct?

A No, I never had.

Q Do you believe in that hearing that Judge Porteous felt -- truly felt that he could give a fair trial in the case?

A Yes.

Q Was there any doubt in your mind that what was motivating Judge Porteous was that he believed he could be a fair judge?

A Yes, I think he was motivated by he could be fair.

Q Because as a state judge, he would routinely have friends come in front of him in front of the state court; correct?

A Every day.

Q Now, you had mentioned that -- when Mr. Schiff was talking to you, he asked whether you thought that the judge had given an honest answer about the campaign contributions.

Do you remember that exchange with Mr. Schiff?

A Okay.

Q And you said -- well, he was responding to the allegation about the campaign contributions; correct?

A I think so, yes.

Q So Mr. Mole had made a representation

about campaign contributions, and the judge responded to the question of campaign contributions; correct?

A As far as I know, yes.

Q And he was saying that what you just said was wrong; correct?

A Correct.

Q And the judge clearly didn't want the record just to stand with a false statement about campaign contributions; right?

A I'm sure that was his intentions.

Q And he was right about that, that he got the campaign contribution thing wrong; correct?

A That Joe Mole got the campaign contribution thing wrong, right.

Q Let me ask you about Mr. Gardner. At some point Mr. Gardner came into the case on the Lifemark side; correct?

A Yes.

Q Did you ever see Mr. Gardner argue a single motion in that case?

A No.

Q Is your answer no?

A No.

Q Did you ever see him cross-examine a

single witness in the case?

A No.

Q Now, are you aware of a contract to give Mr. Gardner \$100,000 for appearing in the case?

A I only learned about that fairly recently. I didn't know what his fee arrangement was before this came up and somebody pointed it out to me and the contract that he had.

Q Someone pointed it out? Did you see the contract?

A Yeah, I saw it.

Q And were you aware that Mr. Gardner was expressly promised \$100,000 if he could get Judge Porteous off the case?

A After I read the contract a few weeks ago, yeah.

Q In your decades of practice, have you ever seen a contract between two lawyers to give that type of -- to give any money to force a judge off a case?

A No.

Q Would you have thought that was ethical?

A I would think it would be unethical.

Q And when the judge ruled against Lifemark, presumably Gardner lost the \$100,000; correct? He

didn't succeed?

A That's correct.

Q By the way, during the case, did Mr. Mole ever come up to you and say hey, by the way, Jake, I have a contract for 100 grand to see if we could force Porteous off the case?

A No.

Q Did he ever say hey, by the way, Gardner is working for us to create a conflict of interest with the judge?

A No.

Q Did he ever come to you and say hey, I think that Gardner might have given gifts to the judge when he was in Gretna?

A No.

Q Did Mr. Mole ever reveal it to the Court that he had this side agreement?

A Not that I know of.

Q What do you think would have happened if it came out in the middle of a trial before a federal judge that a lawyer had a contract for 100 grand for another attorney to get him off a case?

A I think a whole bunch of lawyers would be in trouble, and I think the judge would take action he deemed appropriate.

Q Now, I'm going to ask you a question, because you were in this case for a long time; right? It didn't go to trial a few months after you entered it; right?

A No, it didn't go to trial.

Q How long before it went to trial after you came in?

A I couldn't tell you. I just don't know.

Q Wasn't it the following year?

A Probably.

Q Didn't Mr. Mole himself enter the case just a few -- about five months before you got into the case?

A I don't know when Joe got into the case. I really don't.

Q Do you think that a corporation like Lifemark might be a little concerned about Judge Porteous coming from the West Bank and taking this case, in the sort of David and Goliath case that you just described?

A I think that they had some concerns. I think any -- I think all large corporations have concerns about judges and justice and having it their way.

Q But didn't Judge Porteous have a

reputation for giving smaller plaintiffs a fair shake in his courtroom?

A I never knew him any other way.

Q Let me ask you, once they got Gardner to come in, wasn't Gardner even closer to the judge than you were?

A We were all friends. I don't know how much closer Don was to Tom than I was, but we were friends. We went to lunch together, Don and the judge and I and Bob and, you know, Lenny.

Q But after Mr. Mole and Lifemark gave the 100 grand to Gardner, the judge had friends on both sides of the case; right?

A Yeah.

Q But Lifemark still wanted it out of Judge Porteous's courtroom; right?

A You've got to ask Lifemark that or Tenet.

Q I only have a few more questions. I promise you.

A I know. I've been there before.

Q I'm making you earn that water, I guess. There's no free lunch in Washington.

You had testified with Mr. Schiff that you thought that you could be disbarred if it became known that you had given the judge money; correct?

A Yes.

Q But that's because you believed that the money was coming out of the curatorships; correct?

A Correct.

Q That was from what Bob Creely told you?

A Right.

Q And I just want to wrap up two questions. One is to confirm that the only time the judge ever personally asked you for money was for the wedding gift; correct?

A That's correct.

Q That was three years after the recusal hearing; correct?

A Right.

Q And from the day he became a judge to this very day, have you ever known the judge to throw a case for cash or friendship?

A No, I don't know of any cases he threw.

MR. TURLEY: Thank you, Mr. Amato. That's all of our questions right now.

CHAIRMAN MC CASKILL: Congressman Schiff, I assume you're getting up because you want to do redirect?

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: I want to make

everyone realize, what we will do in terms of housekeeping, at the close of each witness we will give both of you the time you have remaining.

According to our schedule, this witness has gone on much longer than you all anticipated, and so I want to make sure, as you all prepare your cases and decide what witnesses to call and how long to examine, that you don't get caught at the end not realizing how much time you have remaining in the time that's been allotted to you.

Mr. Schiff, if your redirect is going to be significantly longer than 15 minutes, I would break for lunch now and come back. If you can complete your redirect within 15 minutes -- let me ask this:

Does any members of the panel feel they're going to have questions of this witness?

SENATOR WICKER: I might have two questions.

CHAIRMAN MC CASKILL: How long do you anticipate your redirect will be?

MR. SCHIFF: I will probably go beyond that.

CHAIRMAN MC CASKILL: Why don't we break for lunch right now. It's 12:45.

I want to do another housekeeping matter on the record before all the Senators exit stage right. Keep in mind that we cannot proceed if we don't have seven members here. So if we don't have seven here, we're all going to sit around and wait. That time does not count against the two parties. It just delays how long we are all here hearing this important matter.

So when I say we're going to reconvene at 1:45, I mean we're going to reconvene if everyone works hard to make sure they're back at 1:45 or at least seven of us are back at 1:45.

So that's my gentle rap on the knuckles for this afternoon. I will try not to do any more knuckle wrapping this day. I may need to do more as the days go on, but we will see everyone back here at 1:45.

(Whereupon, at 12:42 p.m., the hearing was recessed, to be reconvened at 1:45 p.m. this same day.)

AFTERNOON SESSION (1:50 p.m.)

CHAIRMAN MC CASKILL: Thank you all, members of the committee, for being here on a timely basis. Let me go through the remaining time. The House has remaining 18 hours and approximately 14-1/2 minutes. And Judge Porteous has 17 hours and approximately 43 minutes left.

MR. TURLEY: May I ask a procedural question?

CHAIRMAN MC CASKILL: Sure.

MR. TURLEY: After the cross-examination of Mr. Amato, we became aware that Mr. Gardner has had a sudden accident. We're not aware of whether he'll be available or not. We were trying to figure out as we plan our time for the coming days whether it's been established whether he will appear or not.

CHAIRMAN MC CASKILL: I think we're working on it. I think Senate legal counsel is taking a look at the issue, and we'll try to get back with you by the end of the day with the best guidance we can give you at this point.

MR. TURLEY: That's all we can ask. Thank you.

I believe, Congressman Schiff, we're ready for you to begin the redirect of Mr. Amato.

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Amato, I just want to clarify at the outset, on the lunches that you had with Judge Porteous over the years, I think you said it may have amounted to hundreds of lunches; is that right?

A That's correct.

Q In any given, let's say 100 lunches, just so we have some idea of the proportion, how often would Judge Porteous pay and how often would you pay?

A Probably couple of times, two, three times out of a hundred he'd pay.

Q And the other 97 times you would pay?

A Or somebody else would pay.

Q But he wouldn't?

A Far as I know, he didn't.

Q You were asked by Mr. Turley whether it's common for judges to have lunch with lawyers. Is it common for judges to take money from lawyers?

A Not that I know of.

Q You were asked, I think, if there was a recusal every time a judge had lunch with a lawyer, whether the courts would be tied up with recusal motions. How often is it that a recusal motion is

made on the basis that a judge took cash from one of the lawyers?

A I've never seen it.

Q So that wouldn't tie up the courts if there were recusal motions based on lawyers giving cash to the judge?

A Probably not.

Q Now, you've testified, I think, on cross-examination as well that in your view, giving him the curator cash didn't affect his handling of the cases in state court; is that right?

A That's correct.

Q It did, however, handle -- affect the handling of the curator cases themselves in the sense that he sent you those cases; right?

A Yes.

Q So in terms of where the curator cases went, the cash you got back had a very direct effect on those cases, did it not?

A Yes.

Q You were asked about whether you had received curators from other judges, and I think you said that you had; is that right?

A Yes.

Q Did you ever have any of the judges in

those other curator cases ask you for cash back from the curatorships?

A No.

Q Did you ever give any of those judges cash back based on curators they sent you?

A No, no, I did not.

Q And you're going to need to pull that microphone closer again.

A I'm sorry.

Q Just pull it really close to you, and I'd move it to the center so we can hear you.

A Okay.

Q Mr. Turley asked if you thought that the judge knew that you would do a good job on the curatorships, if this was why he had sent you the curator cases, and I think you said that you thought it was hard to mess up a curator case.

A Yes.

Q What did you mean by that?

A It's -- it's law school 101, almost. I mean, it's -- you get a petition, you put an ad in the paper, you send a certified letter, you file an answer to the petition that you've done, I know, sent a certified letter on such and such a day, we're going to have a hearing for such and such a

time, you've got a certificate from the Times-Picayune that you ran the ad and you file your answer.

Q And, in fact, at your firm, this is something that neither you nor Mr. Creely did; it was something your secretaries did?

A Well, yeah. I mean, that type of curatorship. There are curatorships where you have to make court appearances and all, but there are a number of different types of curatorships. You could be appointed curator for, you know, somebody who is mentally ill, and that's a different brand of curator case. And you could -- for absent defendant in a domestic case, that you'd have to make an appearance.

Q And Mr. Amato, you wouldn't agree with the suggestion that you were sent these curator cases because the judge felt you were some kind of a curator expert?

A I'm sure there are a lot of people who do very well doing curator cases, as far as procedurally. I don't have any dispute with that.

Q But this wasn't why you were sent the curators; correct?

A No.

Q Mr. Turley asked you about whether you needed to explain how your partnership worked to Judge Porteous, and you said no, it was obvious. Why was that obvious?

A Well, let's see, we did it for a whole number of years. We had business cards that had, you know, Amato and Creely. We owned an office building that had Amato and Creely on it, you know, on the building itself. All the pleadings were filed, Amato and Creely. You know, we had Christmas parties, there were invitations, Amato and Creely Christmas party.

We had crawfish boils, Amato and Creely crawfish boils. It's kind of hard not to know that we're partners.

Q In the course of these hundreds of lunches that you had and Mr. Creely had with the judge, he knew exactly how your firm worked, didn't he?

A I'm sure he had a very good idea. I mean, "exactly" is, you know, a little out there. But I'm sure he did.

Q And, in fact, this wasn't some firm in the abstract, this wasn't --

A It was no mystery. Trust me, there was no mystery that Bob and I were 50/50 partners.

Q This wasn't some Washington law firm you're talking about; this was your own practice; right?

A Right.

Q And, in fact, this was a practice that Judge Porteous had been a part of, he'd been a partner in the practice before he left for the bench; right?

A Right. Well, he had some time where he was not a judge where he was not our partner either.

Q But we're not talking about Bryan Cave here. We're talking about Amato and Creely; right?

A Who is Bryan Cave?

Q The firm that Mr. Turley raised with you.

A See, I -- I don't --

Q With respect to the amount of the curator money, both that -- well, the amount of the curator money that went back to the judge, I want to follow up with you in terms of where that approximation came from.

If the records demonstrate that will be introduced in evidence that over the course of years, you and Mr. Creely received about \$40,000, in excess of \$40,000 in fees from the curator cases, what is your best estimate of how much of that you

gave back to the judge?

A Probably half.

Q And that would be about \$20,000?

A Yes, sir.

Q And he got about half of the curator money back because that was your agreement with Mr. Creely; right?

A Yes.

Q And that was based on your discussions with Mr. Creely?

A Yes.

Q You were going to give him half the money back; right?

A Yes.

Q When you discussed the periodic requests for the curator money from Judge Porteous, how did you and Mr. Creely discuss it? What did you call the money?

A Curator money.

Q You mentioned earlier that before the Liljeberg case, Judge Porteous never asked you for cash. But weren't there occasions when it was you and not Creely that gave Judge Porteous the curator money?

A I think so. I just don't recall. But I

think so.

Q Do you have any doubt that Judge Porteous understood that the curator money he was getting was from both you and Mr. Creely?

A No doubt.

Q With respect to the Lifemark -- the Liljeberg case, you stated that you don't know how you got to be asked to join the litigation; is that right?

A That's correct. I don't know how I got to be asked, but I was asked.

Q And this was a complicated bankruptcy case involving a hospital?

A Well, it was a complicated case. I didn't do any bankruptcy work. Doug Draper did the bankruptcy work and Lenny Levenson did the bankruptcy work.

Q That was one of the central issues in the case; right?

A Was the bankruptcy?

Q Yes.

A I think that's how it wound up in front of Judge Porteous, was that the bankruptcy court sent it to district court to rule on this particular matter as to the return of the hospital, et cetera.

And the bankruptcy court basically handled the administrative -- you know, who got paid, when they got paid, et cetera.

Q You weren't brought in the case, I take it, because of expertise you had in bankruptcy law?

A Well, Doug Draper is probably one of the most respected bankruptcy lawyers in Louisiana and maybe in the United States. And that was his bailiwick.

Q And that was Liljeberg's bankruptcy lawyer on the case?

A Yes.

Q So you weren't brought in as a bankruptcy expert?

A No, I was brought in as a trial lawyer.

Q And this litigation that you were brought in as a trial lawyer, how long had it been going on?

A I -- three years, four years. I don't know. I just don't know. I know when I was asked to join the team, I took a good deal of time looking at it, deciding if it was worth the risk to take the case on, and reviewing all of the pleadings and all of the exhibits and testimony, et cetera.

Q And Mr. Amato, you didn't know how long the case had been going on because you hadn't been

involved in those earlier stages of the case; right?

A That's correct. I never said I was.

Q So here you have litigation worth potentially, I think you said, a couple hundred million dollars?

A I'm sorry?

Q Here you have litigation that's worth potentially a couple hundred million dollars to your client?

A Well, there's always hope, but I didn't think it was worth a couple hundred million. But, you know, I thought it was a very valuable piece of litigation, yes.

Q And had you ever done work for the Liljebergs before?

A No.

Q So in a case worth conservatively, let's say, 10s of millions of dollars, six weeks before trial, you are brought into the case. Is that -- have I got that correct?

A As correct as -- I can't dispute it, other than the fact that the Liljebergs couldn't hire any law firms in the city to represent them. There was no law firm that felt that they could represent the Liljebergs because Tenet was conflicted.

Q Now, Mr. Amato, I'm sure you're a superb trial lawyer.

A Was.

Q Was. Was there any other reason you were brought in six weeks before trial to this multimillion dollar litigation?

A I'm sure my relationship with Judge Porteous had something to do with it.

Q And, in fact, when the attorney, the main attorney for the Liljebergs brought you on, he asked you about your relationship with Judge Porteous, didn't he?

A I'm sure he did.

Q And that was part of the reason they wanted you on the case, wasn't it?

A I'm sure it was.

Q And you had a tough decision to make about whether you wanted on the case because you would be devoting a substantial period of time almost exclusively to that case; right?

A Yes. And that -- I never have in my career, the career I did have, take a case because of solely the friendship with the judge, any judge. I took cases on the basis of merit.

Q And in this case you believe the merits

were on your side; right?

A I still believe that.

Q But you also believe you had another factor in your favor, right, and that was your friendship?

A I don't think it was just friendship. I think it was my ability or my knowledge of how Judge Porteous tried cases, how he acted as a lawyer, how he acted as, you know, a referee, you know. I knew the man. I mean, it's not a crime to know the judge.

Q And part of the reason, though, that you thought you might win the case is because you had a friendship with the judge; right?

A I didn't think having a friendship with Judge Porteous would make one bit of difference, but I was glad to have a friendship with Judge Porteous, yes.

Q Let me -- let me show you a transcript, if we could pull it up on the screen.

CHAIRMAN MC CASKILL: IT? Anybody home, IT? Oh, there we go.

BY MR. SCHIFF:

Q This was --

A I can't see. You're going to have to --

Q This was from the Senate deposition that has already been introduced into evidence. I asked you a question during that deposition, "Mr. Amato, you've testified earlier that part of the reason you took the case was the merits and part was your friendship with the judge, those were the two reasons why you thought you would succeed. Am I right?"

And your answer was, "well, yes."

A Yeah, I don't think there's any difference between what I just testified and that.

Q And I went on to ask you, "and you testified earlier that part of why you thought your friendship was important is that you had shown him generosity in the cash" -- if we could go to the next page, "in the cash that you provided him; right?"

"Answer: I think it went more than that, but yes."

So at least part of the decision why you thought you might be successful in litigation was you were friends and part of that friendship was your giving him cash; correct?

A I don't think those are sequential pages, Mr. Schiff. I'm not sure. I can't -- I have a hard

time seeing it, and I can't tell what you were referring to.

Q I'm referring just to those two questions and answers that I just gave you. We can try to blow that up on the screen if you're not able to read it or we can print it out for you.

(Witness reviewed the document.)

A All right, I've answered that -- the first one that you highlighted.

Q Mr. Amato, let me just ask you, part of the reason why you thought you'd be successful was your friendship. Am I right?

A "I think it went more than that but yes. And part of that generosity you showed on the fishing trip when you said you would give him the 2000 -- cash he asked for; is that correct? Right."

Well, the question is out of sequence. The question -- the second question happened 2-1/2, three years after the case was tried.

Q Mr. Amato, I think you're skipping a question. Let me just, if I could have both pages, let me just go ahead and read you the two questions again if that will simplify matters.

"Question: Mr. Amato, you testified earlier that part of the reason you took the case

was the merits and part was your friendship with the judge. Those were two of the reasons why you thought you would succeed. Am I right?

"Answer: Yes."

Was that testimony correct?

A That's absolutely correct.

Q My next question was, "and you testified earlier that part of why you thought your friendship was important is that you had shown him generosity in the cash you had," and I don't have the second page in front of me and I can't read that small print, "in the cash you had provided him; right?"

And the answer is "I think it was more than that, but yeah."

Is that accurate testimony?

A Yeah. Yes, sir. I'm sorry.

Q Now, opposing counsel, Mr. Turley, asked you whether you were familiar with a long history of recusal, with a long history of recusal in this case, and showed you, I think, this exhibit showing many times when the judge had been reassigned or the case had been reassigned.

You were not familiar with that document?

A Still not familiar with it. I can't read it from here.

Q Are you in a position to testify as to why the case was reassigned to different judges over the years?

A No.

Q Do you know whether this was on the motion of Liljeberg or Lifemark?

A No, I don't know. The only one -- only thing I know is that the judge who had it before Judge Porteous was -- passed away, the gentleman has passed away.

Q You're not suggesting that Lifemark was responsible for that change in assignment; right?

A I hope it wasn't in one of their hospitals, but no, I don't have any --

(Laughter.)

Q If there were other occasions when a judge unloaded the case to a new judge, would you have any information about that?

A I don't -- I don't know why judges do things like that.

Q During the recusal hearing -- I want to show you a couple pages of transcript as well.

And again, if I could have the copies in front of me, because I have a hard time reading from where I am the screen.

I want to ask you about the dialogue and the judge's representations during the hearing.

Let's start with Mr. Mole. If you could highlight that portion of the transcript.

MR. TURLEY: I'm sorry, do you have a page number? We're trying to find it.

MR. SCHIFF: Yes, I'm sorry, page 4. I don't know if this is the same page number. Is it? That's from a motion rather than a transcript itself. Page 56 -- no. Exhibit 56, page -- I think, looking at the front of this, this is part of the pleading, not the full transcript itself, unless I'm reviewing it incorrectly. We will provide counsel with exact pages. If there's any confusion, I'd be happy to stop. But why don't we start with Mr. Mole's statement.

BY MR. SCHIFF:

Q Mr. Mole says, "what prompted us to file the motion is the timing of what happened. This case is 10 years old, the oldest part is 10 years old. The lawyers who are in the case now are these previous to September 12 when you granted leave to add Mr. Amato and Mr. Levenson, who has been in for years. The case was set for trial and you had an emphasis about keeping the trial date. They were

added within two months of the trial date. In a case of that length, I don't know Mr. Levenson or Mr. Amato very well. I know they're fun to practice against, they have a sense of humor, and they are doing this quite literally -- other than none to my knowledge they are your friends.

"They have been given 11 percent contingency fee in a case that the Liljebergs, everybody, I disagreed, value at 140 million. At least part of this we have a percentage of. And I think that bears even more weight when you consider Mr. Liljeberg has taken the position that he doesn't give contingency fees."

He later in that same statement goes on to say, "Mr. Levenson has accused me and my client of engaging innuendo. I looked up the word. Innuendo is generally derogatory and witty way of making accusations indirectly. I don't think I have done that. I have been very direct. Mr. Levenson, and I think it is a good tactic, has tried to dare me to say what is the nature of the relationship between you and him and you and Mr. Amato that are the two gentlemen behind me.

"If they have something to contradict the statement that I made, which is that you are all --

you all are indeed very, very close friends, I would have assumed that they would have made it. I'm happy to tell the judge what the public perception is of the relationship."

The judge goes on to say, "yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes.

"Have I been going to lunch with all the members of the bar? The answer is yes."

Mr. Amato, at any time during the hearing when he says that he had never been to your house, did he describe how he would frequently go to your houseboat for fishing trips?

A He's never been in my house. He's been hunting and fishing on a houseboat, which --

Q When he was explaining to the counsel during the hearing, did he discuss about how -- well, he'd never actually been to your house, but he'd often been drinking and eating with you on the houseboat?

A That's what it says.

Q Did he discuss hunting trips during the recusal hearing?

A Not that I know of.

Q Did he discuss any of the cash that you and Mr. Creely had been giving him for the curatorships?

A Not that I -- not that I know of.

Q Don't you find it misleading to suggest that you've never been -- he'd never been to your house, when he'd had all these other social interactions with you?

A I think we had a social relationship, and as to it being misleading, I think that question really belongs to Judge Porteous.

Q I'm asking you since you knew the relationship. Don't you find that misleading?

A Well, I think the distinction was is that we never had a social life with our wives, going out to dinner, going to Christmas parties and stuff like that.

As far as hunting and fishing, I don't think that that was ever a secret to anybody.

Q And so you don't find it misleading when he says that they had never been to your house?

A That's not misleading. That's true.

Q And you don't think he should have disclosed all the rest of the nature of your

relationship?

A He probably should have.

Q Beyond he probably should have, don't you think he was obligated to disclose the cash you'd been giving him?

A Yes.

Q After you lost -- I'm sorry, after Lifemark lost the recusal motion, Don Gardner was brought in. Do you know why?

A I presume that -- to try to influence the judge.

Q Would it surprise you to learn that he was brought in basically to bring in a friend of the judge on the other side of the case?

A Would it surprise me?

Q Yes.

A No, because most big corporations shop lawyers to match judges.

Q So it wouldn't surprise you if the reason he was brought in was only because of his friendship with the judge?

A Yes.

Q As a way of offsetting your friendship with the judge?

A Yes.

Q It wouldn't surprise you?

A Wouldn't surprise me.

Q When Judge Porteous asked you for the cash on the boat trip, Mr. Turley has characterized it as a wedding gift. You've never described it that way, have you?

A No.

Q Judge Porteous wasn't asking you for something that his son was registered for at some department store, was he?

A No.

Q This wasn't the toaster oven or a bread maker?

A No.

Q He was asking you for 2- to \$3000 in cash; correct?

A Correct.

Q And in fact you did give the groom a wedding present; right?

A Yes.

Q This wasn't it?

A That's right.

Q You were asked whether you'd ever given other gifts to other judges. Had you ever given cash?

A No.

Q Had they ever asked you for cash?

A They asked me for campaign contributions, but not for cash as such.

Q Did they ever ask you for pocket money or cash or --

A No.

Q -- kickbacks from curatorships?

A No.

Q Now, you said that on this boat this was the first time that he personally had asked you for cash?

A Right.

Q And that this was something of great significance, great importance to him.

A Yes.

Q And this was quite obvious from how emotional he became in his asking for the money?

A His demeanor, yes.

Q So you understood that this was something of critical importance to him?

A Yes.

Q Now, you testified on cross that you gave him the money, but influencing the judgment was not the primary reason; is that right?

A Yes, that's correct, it wasn't the primary reason, a moving reason. It was because of my friendship, and I really felt sad for him.

Now, I did consider that, you know, I had a case in front of him.

Q In the House I think I asked you to break down --

A Yes.

Q -- how you weighted this, how much of your motivation to give him the money was based on your friendship and how much was based on the fact that this was a federal judge sitting on a case worth a potential half million to a million to you. How did you break that down?

A 20 percent because he was a federal judge, the rest because of friendship and because I really felt sorry for him. I know what it's like to raise a bunch of kids, you know?

Q But 20 percent was because he had a case worth a fortune to you, wasn't it?

A Yes, and I -- biggest mistake I ever made.

Q You didn't believe it would influence the judge's decision necessarily, but you weren't willing to take the risk that it might?

A That's correct.

MR. SCHIFF: I have nothing further at this time, Madam Chair.

CHAIRMAN MC CASKILL: The committee now has an opportunity to ask the witness questions.

MR. TURLEY: We did want a recross.

CHAIRMAN MC CASKILL: Okay.

MR. TURLEY: Thank you.

RECROSS-EXAMINATION

BY MR. TURLEY:

Q Hi, Mr. Amato. I only have a few questions for you.

First of all, after your cross-examination with us, I saw that you were wheeled out by the House staff; is that correct?

A No, Ralph Capitelli, my lawyer.

Q Did you speak with the House staff after your testimony today?

A Yes.

Q Okay. And you talked about your testimony upon their redirect?

A Yes, that's correct.

Q Let me just clarify a couple of things because there's no reason for us to be ambiguous.

In your testimony with me, you said that you had never seen a recusal motion in your history

as a judge in Gretna; right?

A That's right.

Q So when Mr. Schiff said what's the percentage of the recusals that was due to cash allegations, you said zero; right?

A Right, that's correct.

Q But if you saw zero recusals, wouldn't the answer always be zero, regardless of the reason?

A Far as I know.

Q So if I asked you how many recusals were based on human cloning, you would have to say zero; correct?

A That's correct.

Q Now, also there was discussions about Judge Porteous asking you for cash back from curatorships. Did Judge Porteous ever come to you and ask you for cash back from curatorships?

A To me myself?

Q To you.

A No.

Q And did he ever -- Mr. Schiff referred to asking you for kickbacks from curatorships. Did Judge Porteous ever come to you and ask you for a kickback from curatorships?

A No.

Q Thank you. And by the way, you've given gifts to judges, like most lawyers in Gretna; correct?

A I don't know about most lawyers, but, you know, we get invitations, or we were getting invitations, to weddings and, you know, some of the judges we sent Christmas hams to and things like that. One year we gave them all cheese.

Q So hams, cheese. You ever send seafood?

A Probably.

Q And you know lawyers in Gretna will sometimes send tickets or other little gifts to judges?

A Take the judges to the game.

Q And by the way, when you said it was obvious that Creely and I were partners, you referred to the name of your firm; correct?

A Amato and Creely, right.

Q So anyone looking at that name would say Amato and Creely are partners; correct?

A Correct.

Q You weren't suggesting that anyone looking at the name would say -- would know immediately the inner workings of your firm, were you?

A I don't see how they could, but I'm sure

that, you know, two guys practicing law with a bunch of associates, it's pretty obvious that it's, you know, a two-man partnership.

Q There's lots of types of partnerships, even two-man partnerships; correct?

A Correct.

Q Now, by the way, all this business about your being asked about your relationship with the judge, I'd like to ask you a question as an experienced lawyer.

In every case that you've ever taken, didn't the client or other lawyers ask if you knew the judge you were in front of?

A Every client always asks did you have the fix in with the judge? And I always tell them no, the judge is my friend and he's going to do the right thing, no matter who the judge was.

Q But also whenever you've entered a case, wasn't it common for people to say have you ever practiced before judge X?

A Of course.

Q All right. And isn't it common for them to say, what do you -- what's judge X like in court?

A Yes.

Q Okay. And, in fact, in your deposition

testimony, you referred to a friendly judge. Do you remember that? You were talking about what a friendly judge is?

A Yes.

Q And by a friendly judge, you weren't talking about a friend judge; you were talking about a judge that would give you a fair hearing; correct?

A That's correct.

Q Now, Mr. Schiff asked you about Mr. Mole coming into the case. Would it surprise you if I was to inform you that Mr. Mole entered the case in April 1996? Does that sound about right to you?

A I have no idea when Mr. Mole entered the case.

Q Well, you entered in September 1996; correct?

A That's -- I'm sure it was.

Q Well, if Mr. Mole entered in April and you entered in September, there wasn't a big gap in time between when you entered the case; correct?

A No, there wasn't a big gap in time.

Q By the way, Mr. Schiff keeps on talking about how you entered the case with only six weeks before the trial; correct?

A Yes.

Q Did you actually -- were you actually asked to join the case and immediately joined the case?

A No.

Q So when you entered the case six weeks before the trial, that wasn't the first time you started looking at the case; correct?

A No, I'd looked at it for months before.

Q So really the relevant thing is that two or three months before you started to look at this case and consider entering; isn't that correct?

A That's correct.

MR. TURLEY: I have no more questions, Madam Chair. Thank you.

CHAIRMAN MC CASKILL: Thank you.

And does -- and let me, just so we have it on the record, any questions asked by the committee will not be counted against the time of either the House members or Judge Porteous's lawyers. So it's our time.

And I just want everyone to be as to the point as we hope the lawyers are in the questions, so that we cannot be here for three weeks instead of a week and a half, if possible.

So I will open it up to questions and

we'll go -- we'll use the same system that we use in committee hearings. We'll go back and forth by seniority.

So I would ask you, Senator Hatch, do you have any questions?

VICE CHAIRMAN HATCH: No, I'll reserve questions.

SENATOR KLOBUCHAR: I'll reserve.

CHAIRMAN MC CASKILL: Senator Barrasso?
Senator Sheldon Whitehouse?

SENATOR WICKER: Two questions.

CHAIRMAN MC CASKILL: Senator Wicker.

EXAMINATION

BY SENATOR WICKER:

Q Mr. Amato, have you calculated, had Judge Porteous's judgment been affirmed in whole by the 5th Circuit, how much your attorney fee would have been?

A No, I have never calculated it. I've never learned how to count the chickens until they hatch, Mr. Wicker.

Q Have you received any attorney fee at all in this case?

A No.

SENATOR WICKER: That's all I have.

CHAIRMAN MC CASKILL: No questions?

I have just a couple of questions.

EXAMINATION

BY CHAIRMAN MC CASKILL:

Q Mr. Amato, it has been stipulated for the record that in 1988, your firm got 18 conservatorships from Judge Porteous and in 1989 you got 21 of them. In 1990, you got 33. In 1991, you got 28. In 1992, you got 44. In 1993, you got 28. And in 1994, you got 20.

My question to you is, how frequently did your partner come to you and ask you to cash a draw in order to give Judge Porteous cash? How often did that happen during the year?

A Probably a couple -- two or three times a year.

Q And generally speaking, was that a fairly large amount that you were asked to draw in terms of these numbers of conservatorships?

A No.

Q Do you know how -- typically how long these conservatorships lasted?

A It usually took about 90 to 120 days to six months for them to go from inception to conclusion.

Q But the pattern here is because you didn't want a paper trail, you, in fact, year after year, numerous times during the year, would, in fact, cash out to send an envelope to Judge Porteous?

A Correct.

Q And typically, you would be reminded when and how much to do by your partner?

A Right. Correct.

Q And it's my understanding these conservatorships, it's an administrative function for a lawyer; correct?

A Basically, yes.

Q There's no advocacy, no litigation. This is a matter of filing some kind of public notice and doing what could be fairly characterized as a ministerial type of duty for a lawyer?

A In most cases, that's correct.

CHAIRMAN MC CASKILL: Thank you.

House may call its next witness.

MR. SCHIFF: Thank you, Madam Chair.

The House calls Robert Creely.

THE WITNESS: Am I excused?

CHAIRMAN MC CASKILL: You are excused,
Mr. Amato. Thank you for your cooperation.

THE WITNESS: Thank you all very much for

the courtesies that have been extended to me.

SENATOR WHITEHOUSE: Madam Chair, while the next witness is coming up, I wonder if it would be appropriate to request from the House to indicate whether evidence was developed during the course of the House investigation subsequent to the 5th Circuit decision that has been referred to.

And, if so, if it would be appropriate to ask the House to highlight what that evidence was, i.e., are we being asked to rely on evidence that was developed post the 5th Circuit decision that Mr. Turley referred to? Not immediately. At some point during the proceedings.

MR. SCHIFF: Senator, with respect to the curatorship issue itself, we were able to get records that the 5th Circuit did not have about how many curatorships were assigned to the Creely and Amato law firm, what the values of those curator cases were worth.

We also --

SENATOR WHITEHOUSE: Rather than take everybody's time at the moment, I'd prefer not to interrupt the proceedings, could this be done in writing?

MR. SCHIFF: Yes, we'll have an exhibit to

submit that will chronicle all the curatorships and the time period.

SENATOR WHITEHOUSE: Display that.

MR. SCHIFF: We also -- I don't believe the 5th Circuit had, for whatever reason, the transcript of the recusal hearing, and that, I think, is evidence that they did not consider what the judge said, the judge's recognition of what the standards were to be applied.

So all of that, I think, is evidence that the 5th Circuit did not refer to or did not seem to have.

SENATOR WHITEHOUSE: And if there's anything further, I would appreciate it if you could just prepare a list and provide it to the committee, if the chair will agree.

MR. SCHIFF: And I don't know, Senator, whether you're referring just to the situation with Amato and Creely. The Marcotte information I'm not sure the 5th Circuit had either.

CHAIRMAN MC CASKILL: What I think the Senator is asking is if you all could delineate a list of exhibits or numbers of stipulated facts that has come to the attention pursuant to the House investigation for impeachment as opposed to

information that was gleaned from the 5th Circuit disciplinary proceedings.

MR. SCHIFF: Happy to.

SENATOR WHITEHOUSE: That would be perfect, thank you.

CHAIRMAN MC CASKILL: Okay. Next witness.

Mr. Greeley -- how do I pronounce your name, Creely or Greeley?

THE WITNESS: Creely. Unlike the city. Creely.

CHAIRMAN MC CASKILL: You have been called as a witness by the House Managers for this impeachment proceeding. Would you stand and raise your right hand so the oath may be administered. Whereupon,

ROBERT G. CREELY
was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Please be seated.

Mr. Creely, as you know, you have been granted immunity by the United States District Court for the District of Columbia for your testimony before this committee. The court's order of July 27, 2010 was communicated to you at your deposition before this committee on August 2, 2010.

That order, which committee staff will hand you a copy of, covers your testimony today.

Congressman, you may proceed with your examination of the witness.

MR. SCHIFF: Thank you, Madam Chair.

DIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Creely, I want to say at the outset, I know you sometimes have difficulty hearing. If I ask you a question or my colleagues do that you can't hear, let us know and we'll make sure you can hear everything that's said.

A Thank you.

Q Please just begin by stating your full name for the record.

A Robert G. Creely.

Q And Mr. Creely, will you tell us a little bit about your educational background?

A Yeah. I went to Cor Jesu High School, Loyola -- UNO College, University of New Orleans, Loyola law school, and then practiced law.

Q And how long have you been practicing law?

A 35 years.

Q At some point, did you begin practicing law with Jake Amato?

A With Jake Amato?

Q Yes.

A Yes, sir, I did.

Q When did that come about? Did you know him beforehand? How did that come about?

A I had a job as a law clerk with his sister and his brother-in-law. And that is how I knew who Jake was. I didn't know Jake, but I knew who he was.

I was in law school at the time, in 1972-1973. And how I met Jake, met him on a cold day, it was one of these days in New Orleans where the streets were frozen, and I couldn't drive across the Mississippi River bridge. And I took the ferry. I drove down Jackson Avenue from law school, parked my car, got on the ferry.

And he was on the ferry in his car, and he invited me into his vehicle to get out of the cold. And we became friendly. We met each other formally, and that's the beginning of our relationship.

Q At the time that you joined him in practice, was Judge Porteous an attorney at the firm as well?

A When I became -- well, I worked for the sister and brother-in-law. Then they asked me to be

a law clerk. I believe I clerked over there as a law clerk for about six months to a year, until I graduated from law school. And then they -- somehow I became a lawyer in the firm. They asked me to work there, yes.

Q But at the time that you were clerking for the firm, later became a lawyer of the firm, was Judge Porteous then an attorney with the firm?

A Yes, sir. It was -- it was Edwards, Porteous and Amato.

Q Is that how you first met Judge Porteous or had you known him before you began to work at the firm?

A Basically that's how I first met him.

Q At some subsequent point, did you become a partner of the firm?

A No, I didn't become a partner in the firm. I was a -- I was an employee.

Q You were an employee when you initially started at the firm?

A Yes.

Q At some later point did you become one of Mr. Amato's partners?

A Yes.

Q Was that a different firm?

A Yes, sir.

Q And about when did you become a partner of Mr. Amato's?

A I believe I was practicing law -- okay, bear with me going back to '73, but I believe I was practicing law for one year with Edwards, Porteous and Amato. Around that period of time, Mr. Amato and I decided to leave Edwards, Porteous and Amato and form our own law firm, known as Amato and Creely. And we did.

We moved out of that building and into another building and began to practice as Amato and Creely.

Q And about when would that have been?

A I would say '75.

Q Would that have been after the judge was already on the bench?

A Oh, no. It would have been way before he was on the bench.

Q So while he was still practicing law, you and Mr. Amato split off for another firm and formed your own practice?

A Yes, sir.

Q The partnership that you had with Mr. Amato, was it 50/50?

A Yes, sir.

Q Split the expenses, split the profits evenly?

A Yes, sir.

Q Do you recall in 1984 that Mr. Porteous became a state judge?

A Yes, sir.

Q And after he became a state judge, did you interact with him socially?

A Yes, sir.

Q And in what way?

A Well, before and after he became a state court judge, we were social -- we were friends. We were friends. I didn't terminate my friendship with him because he became a judge. I didn't stop being his friend.

Q Tell me about that friendship. What kind of things did you do together?

A After?

Q Before, during, after.

A Before we were friends. I mean, I looked up to him at that time as -- at that time as a mentor, so to speak. He had the reputation of being an extremely aggressive attorney, district attorney, was knowledgeable in the law. And I looked to him

as a mentor. I looked to him as someone I admired.

And I liked his -- the way he did things.
If I'm explaining it properly to you.

Q I want to ask you the nature of your
social relationship. Did you have meals together?

A Before I was -- before he became a judge?

Q Let's focus on when he was a state judge.

A Just when he was a state judge?

Q Yes.

A I had -- I remained friends with him. It
was a friendly relationship with him.

Q So while he was on the bench, you would
have lunches with him?

A Yeah.

Q And you had lunches before he was on the
bench?

A Absolutely, yes, sir.

Q And you had lunch with him when he was on
the federal bench?

A Yes, sir. Not as often, but I did.

Q And how often -- let's focus for now on
the state court tenure. How often would you have
lunch with Judge Porteous?

A From 1984 to 1994, the best as I can
recall, it was -- and before I was asked -- excused

from the room, I heard just a portion of Mr. Amato's testimony. And then I was sequestered. Somebody asked me to leave the room. I didn't know I was sequestered.

He said twice a month. I didn't eat with Judge Porteous as often as Mr. Amato, but my recollection was around twice a month was my recollection. But don't -- I didn't eat with Judge Porteous as often as Mr. Amato did.

Q So your recollection was that you ate with him about twice a month?

A A guesstimation, yes, sir.

Q And you think that Mr. Amato ate with him more frequently than that?

A That was my recollection, correct.

Q And over a period of years, what would you estimate, how many lunches would you have together?

A Over a period of years?

Q Yes.

A How many years?

Q During your entire relationship, how many lunches would you have together?

A I didn't hear that.

Q Let's confine it to while he was a judge in state or federal court. How many lunches

ballpark?

A While he was in state and federal court?

Q Yes.

A I couldn't tell you. I don't know. I have no idea.

When he was in federal court, I did not hang around with him. I wasn't as friendly with him as I was in state court, when he was a state court judge, because I worked in Gretna and his -- his seat was in Gretna.

When he moved to New Orleans to be a federal judge, I was extremely busy during that period of time. I didn't hang around with him a whole bunch while he was in federal court.

So my relationship petered off, so to speak, when he got into federal court. I didn't -- I didn't see him as often as I did when he was in state court.

Q When he was in state court two times a month, would that add to about 100 times or more?

A A hundred times?

Q Yes.

A I'm trying to do the math but I'm too tired. If I did twice a month times 120 months, I don't know what that -- I don't know. But it would

be pure speculation. I may not have gone to lunch with him in the month, you know, but if you want -- you know, if I'm guessing at twice a month, I will guess at twice a month.

Q And when you would go out to these lunches, who paid?

A I did. Or someone else.

Q But not Judge Porteous?

A Not Judge Porteous.

Q Did you also go hunting with Judge Porteous?

A Hunt?

Q Did you go hunting with him?

A Yes, yes. Before he was a state judge, after he was a state judge and after he was a federal judge, we hunted and fished together.

Q And tell us a little bit about the hunting trips. What were those like?

A The hunting trips?

Q Yes.

A The hunting trips. Well, I had a camp in Delacroix Island. At first we had a houseboat in Delacroix Island that we used as our home base, so to speak, for hunting and fishing.

And then we -- then we got rid of the

boat, and I bought -- I rented a house, which was about a thousand-square-foot house, a camp is what we call it in Louisiana.

And I had my boat in front of the camp. And we would -- we would go down and go into my house or the houseboat before I got the house, and we would go -- use that to -- as our base to go fishing.

And I would store my fishing boat in a very close proximity of the camp, when I had the camp, or the houseboat when I had the houseboat.

Q And did you ever go on any hunting trips outside of -- to this houseboat? Did you go on hunting trips to other locations, hunting or fishing?

A Yeah. If you're talking about the Mexico trips? Those are the only other trips that I can recall going on with him to hunt and fish.

Q And tell us about the hunting trips to Mexico.

A I think we went on, you know, three trips to Mexico.

Q And how much would those trips cost?

A It's hard to tell. The more people you got to go, the less expensive it was. And the way I

recall, the first hunting trip we did, we wrote letters to maybe 75 lawyers and different friends of ours, inviting them to go on the trip. Because the more people we would get, the less it would cost to go. And then one or two people would get a free trip, depending upon how many people you were able to accumulate to go on the trip.

So the first time around, you know, I don't remember the number of people that came with us on the trip, but there were maybe 12 or 15 people on the first trip.

I don't remember sort of vaguely about the second and third trip, how many people went. But we'd always have at least around 10 people going on the trip.

Q To your knowledge, did Judge Porteous ever pay for any of these trips?

A No, sir, he did not.

Q Did you ever pay for any of these trips?

A Yeah, probably I did. And the deal was, as I testified to, you know, patience with just a little bit of my testimony, is that you had 10 people, one person went free. I don't know how we divided up the 10th person. I don't know if he was the 10th person or we divided the 10th person up

amongst everybody, giving each of us a reduction in the total amount of the hunting trip.

Q But however it was done, Judge Porteous didn't pay?

A Porteous didn't pay, no, sir.

Q Did there come a time when Judge Porteous was a state judge, when he started asking you for cash?

A Yes, sir.

Q Tell us a little bit about how he first approached you for money.

A I mean, I would be guessing, but it would probably be at lunch or we would be hunting or fishing and he would tell me he needed small amounts of money, and I would give it to him.

Q In the beginning, what were the small amounts of money? What would he ask you for?

A 50, \$100.

Q Was this money that you had on your person?

A I'm sorry? Yeah, it was money that I had in my pocket, correct.

Q And you just gave it to him?

A Yes, sir.

Q At a certain point, did you tell him you'd

had enough?

A Yeah, after a while, I did. And I believe that I may have given him cash before he was a judge also. But at a point in time, I did tell him I was tired of giving him cash, correct.

Q I take it you didn't like giving him the money?

A I felt imposed upon. I felt put upon that he continued to ask -- I thought it was an imposition on our friendship.

Q And what did you tell him when you told him that it had to stop?

A Probably sometime when he was sitting on the state bench.

Q What did you tell him?

A I'm tired of giving you money.

Q Do you remember anything else about what you told him?

A Pardon me?

Q Do you remember anything else about that conversation?

A Generally I'm tired of giving you money, something -- I'm tired of giving you money, something to that effect.

Q You mentioned in the beginning it was

small amounts of money. Did he start asking you for more money?

A Yeah, he started asking for at one occasion -- and I'm just estimating, because I'm trying to put it together over a 10-year period of time. But at one point in time he may have asked for \$500.

Q And was that the point that he started asking for sums like \$500, that you told him it had to stop?

A Yes, sir, a couple of times he asked for \$1000.

Q And that's when you told him that's enough?

A I told him that before that. I told him a couple of times, I'm tired of that. I'm tired of giving you money. This isn't what friends are supposed to do to one another.

Q And the money you gave him up until this point, up until you told him it had to stop, was it always cash or did you ever write him a check?

A It was cash.

Q Now, after you told him that you were not willing to give him money anymore --

A Yes, sir.

Q -- did he start sending you anything?

A Yes, he started sending curators over.

Q Did you ask him for the curator cases?

A I have never asked him for a curator. A curator was like a pain in the neck to me. I did not ask him for a curator. I didn't need curators. I didn't want curators. They started showing up.

Q We've had a little testimony already about the nature of the curator cases, but can you give us just a quick nutshell on the cases that you handled, what are they like?

A It's a court appointment of a lawyer to represent an absentee defendant, a defendant that the plaintiff can't find.

Q Do you recall how much the fee was approximately for each curatorship?

A No, but I've read testimony to the effect that it was roughly \$200.

Q Is that consistent with your recollection?

A Yes, sir.

Q After he began sending curatorships, did Judge Porteous begin asking you for cash again?

A I'm sorry, sir?

Q After he began sending curatorships to you, to your firm, did he start asking you for cash

again?

A Yes, he did.

Q And as a result of getting these curatorships, did the firm now send money to Judge Porteous in response to his request?

A We continued sending him money. Not sending him money. Giving him money.

Q Giving him money. Can you describe a communication for us you had with Judge Porteous regarding the relationship between assigning the curatorships and asking for cash?

A I didn't get that whole question, I'm sorry, sir.

Q Can you tell us about any communication with Judge Porteous regarding the relationship between sending the curators and getting cash? Did you confront him at some point about this?

A Did I ask him something about that?

Q Did you confront the judge about the relationship between the curators and the cash at some point?

A I always gave him cash. I didn't -- that was not a break in tradition from our friendship to -- it was always cash. I didn't -- I always gave him cash.

Q My question was, Mr. Creely, is at some point when he started sending the curatorships and you were giving him the cash, did you have a conversation with him about the curatorships and the cash? Did you have a conversation with him where you expressed your upset over something he said?

A Oh, okay. And this is testimony that we discussed last night and testimony that I've read.

He called my office one time. Is that what you're talking about?

Q I'm talking about whatever conversations you remember with the judge regarding the curatorships and the cash.

A He called my office one time and asked my secretary if I'd been getting curators, and I became upset with him about that.

Q Why were you upset about that?

A I didn't think -- I didn't put a -- I didn't put a relationship -- I didn't have a connection between the curators and the cash. And he called my office and asked my secretary if I'd been getting curators. And the reason he did that I suspect is because I began to avoid him because I -- he was -- I began to avoid him because every time -- well, not every time, but most of the time that I

was around him, he would begin to ask me for cash, so I would begin to avoid him.

So apparently, he called my office, verbalized that to my secretary. She verbalized it to me, and I had a discussion with him that I didn't think that was appropriate because I didn't put a relationship on the curators and my giving him the cash.

Q You didn't put that connection, but he did?

A I assume he did, yes, sir.

Q And that upset you?

A I'm sorry?

Q And that upset you?

A Yeah, it upset me.

Q And the conversation that was related to you was him calling about the number of curators because he wanted curator money back?

A The thing that upset me was that he called my office and made a correlation that he was giving me curators so that I would give him money back.

Q And did you discuss this -- this communication with Jake Amato?

A Oh, absolutely.

Q And what did you tell Jake Amato?

A I said this is getting out of control with a friend, I don't know how to handle this anymore. I don't know how to end this. I don't know how to control this, but it's got to stop.

Q And what did you tell him the judge was asking for with respect to the curators?

A I related the telephone call to him and told him that, you know, he called and made this request. Best I can recall, I explained my entire dissatisfaction about giving this cash to him and the fact that he's calling and making a correlation between curators and cash.

Q And what did Mr. Amato say, what did he suggest you do about this?

A Keep paying him, it doesn't cost us anything, it's not costing us any money, just if he asks for money from time to time, let's continue giving it to him.

And I said well, I'm going to try to avoid him as much as I can from now on.

Q And did you and Mr. Amato reach some kind of agreement about how much of the curator money would go back to Judge Porteous?

A There was no agreement about how much of the curator money would go back to Judge Porteous.

The agreement was, at least my agreement was, to stay away from him as best I could. And the times that he would corral me, and I use that word, and ask for cash, I would go back to Amato and say we need to go make a draw and give him some money, when I finally couldn't avoid him anymore.

Q And wasn't the amount of money you gave him about half of the value of the curatorships?

A Yes.

Q Isn't that how you and Mr. Amato calculated it?

A No. When I gave that first testimony before whatever -- this is the sixth time I've been under oath, and I'm doing the best I can to recall. First time I gave that testimony, I didn't have the benefit of the curator list, which we had.

And we told everybody about. I didn't review that list before I gave that testimony, because I didn't want to interfere with that list in any way whatsoever because I knew this investigation was going on, and I didn't want anybody to suggest that I was trying to tamper with something that may cause a problem in the future. So I didn't go to the list. That was a pure guess as to how much that I gave him.

Someone asked me to estimate about how much money I gave him, and I made that estimation. I made an estimation of I gave him \$10,000.

Q Let me -- let me refer you to some of your testimony. I think you're referring to your testimony in the grand jury; is that right?

A They all blend together after a while.

Q Let me pull up some testimony from the grand jury.

Could you go ahead and pull up the grand jury or have you done that already? You've done that already.

CHAIRMAN MC CASKILL: Is this the first time we've referenced the grand jury testimony today?

MR. SCHIFF: It may -- it may be, and --

CHAIRMAN MC CASKILL: Do we have an exhibit number?

MR. SCHIFF: Yes.

MR. TURLEY: I'm sorry, I'm understanding the grand jury material was not coming in. Isn't that correct?

CHAIRMAN MC CASKILL: That's correct. But he is referring to it, and until he asks the question, and if you think that there is an

objection there about the basis of -- I'm assuming he's going to use this to either refresh his recollection or impeach him, which for that purposes it would be admissible.

MR. TURLEY: Okay.

CHAIRMAN MC CASKILL: If you don't think it's appropriate, then it's up to you to object. But in the meantime, he can't refer on the record to something without an exhibit number.

MR. TURLEY: Very well.

CHAIRMAN MC CASKILL: Congressman Schiff, the exhibit number is Exhibit Number 11?

MR. SCHIFF: Yes, Exhibit Number 11.

CHAIRMAN MC CASKILL: To help the witness and also for the record, would you make sure and refer to the page number as you go through the testimony.

MR. SCHIFF: Yes.

CHAIRMAN MC CASKILL: Thank you.

MR. SCHIFF: Thank you.

THE WITNESS: Can I see a copy of the transcript? Can I ask my lawyer to give it to me?

MR. SCHIFF: Certainly.

CHAIRMAN MC CASKILL: It should be right there in front of you, Mr. Creely.

THE WITNESS: Okay. Yes, sir.

BY MR. SCHIFF:

Q Mr. Creely, in the grand jury testimony on page 53, Exhibit 11, you testified, referring to Judge Porteous, "and he then started calling and saying, look, I've been sending you curators, you know, can you give me the money for the curators?"

"I said, man. So I talked to my law partner, I said, Jake, you know, man, what do we do? He says, well, just go ahead and give it to him.

"We decided to give him the money. We would deduct the expenses, we would pay income taxes on it. And he got to a point -- and I have a whole list of this, I have a list of Bob's curators okay, and I was even afraid to run that piece of paper, okay, out of fear that it would get lost."

Do you recall that testimony?

A That's basically what I just testified to, I thought.

Q That's what I want to ask you about. So it's your recollection that the judge called you and basically asked for the money for the curators?

A He called and wanted to know if we were getting curators. Now, that exact quotation, he called and wanted to know if we were getting money

from the curators. He made a connexity between curators and cash.

Now, the exact words that I used, whenever the date of this transcript was and what I'm telling you today, I consider to be consistent. If you want to ask me about a word or two in that transcript, which may not be consistent with what I'm saying today.

That is the gist of my recollection.

Q And this grand jury testimony, this took place some years ago; right?

A I'm sorry, sir?

Q Your grand jury testimony was some years ago; correct?

A This has been going on since 2003 for me, so I don't remember when that --

Q No, I'm not asking you what year. But this was -- you testified before the grand jury actually at a time much closer to the events in question; right?

A I believe it was 2005. I don't know when it was. But that was the first -- I'm sorry, what was your question?

Q My question was you testified before the grand jury at a time when the facts were fresher in

your mind than they are today; right?

A Yeah. Yes, sir.

Q And your prior testimony was that Judge Porteous asked you, can you give me the money for the curators.

A Okay.

Q Correct?

A Okay.

Q Is that an accurate recollection, as far as you can tell, of your conversations with Judge Porteous?

A That is generally what happened, yes, sir. He made a connectsity. He told me, have you been getting the curators? All right. That's basically what he told my secretary.

And then -- and so I said, this has got to stop. So he was making a connexity is what I'm trying to tell you.

Q And you, in fact, went and confronted him over this; right?

A Yes, sir.

Q And you had a further conversation about the connection between the curators and the money?

A Yes, sir.

Q And even after that conversation, you and

Mr. Amato continued getting the curators and continued giving him back a portion of the money; right?

A After our discussion we decided to continue giving him money, yes.

Q Did the fact of getting the curatorships from Judge Porteous make it easier to give him the cash?

A Yeah.

Q Why was that?

A Because it wasn't costing me anything.

Q About how often would he ask you for the cash from the curatorships?

A I would be purely guessing, but if you -- if you take \$10,000 over 10 years and you divide it by 10, it's \$1000 a year. I would have no way of telling you how often he asked, other than it would not be tremendously frequent, but it would be. Because as we talk about -- I don't remember. That would be my answer to you.

Q I just want your best estimate. If the documentary evidence shows that the value of the curatorships that you received over the years was worth about 40,000, approximately how much of that would have gone back to the judge?

A I testified, approximately 10,000 from me and 10,000 from Mr. Amato is what we gave him. But that would have been during -- that would have been before, during and after he gave us curators. That's what I -- my best estimate of what I gave Judge Porteous was \$10,000, while he was on the state bench.

Q And I want to ask you about the mechanics of giving him the cash. How did you do that? Did you take a draw from the firm?

A Yes, sir. What we would do is the -- all moneys earned by the firm would go into the general operating account, unless they were client funds, which would go into an escrow or a tolling account. But all earned income would go into the operating account.

And we would simply take a draw, an equal draw. We would ask the bookkeeper to give us each a check for \$250, each give us a check for \$500, whatever the amount may be.

Whatever the amount we may want. And she would write that check to us. And I believe early on in this investigation, I tried to go through these draws that we got, that we took, and tried to make some sense out of it but couldn't, okay.

Because every week, we'd each take a \$1500 personal draw for ourselves, which would be our money that we would -- we would use for our own personal usages. And I would try to go back and look at off draws.

I believe one of the members of either the FBI or Mr. Dubester or somebody, I forget who, in us trying to cooperate, went over the next set of questions you're going to ask, to try to look at a draw for this fishing trip stuff. And we were able to try to identify that draw by -- that payment by an actual draw we took, because it was -- I'm sorry.

Q Mr. Creely, my question is really more about the mechanics of how you got the cash from the firm to give to the judge during the curatorship period. How did that work?

A Went to the bookkeeper and said give me a -- write to check to Mr. Amato for \$250, write a check to Mr. Creely for \$250. They would do it, and then we would endorse it and ask them to go to the bank and cash it.

Q So you didn't have your bookkeeper write a check to the judge, did you?

A To do what?

Q You didn't have your bookkeeper write a

check to the judge, did you?

A No, sir.

Q You had the bookkeeper write a check to you and to Mr. Amato and then you cashed it and gave the cash to the judge; right?

A Correct.

Q And you and Mr. Amato gave equal amounts of the cash from the curators to the judge; right?

A Yes.

Q Because your firm was benefiting equally from the curatorships you and your partner would divide equally the amount you had to pay back; right?

A Mr. Schiff, my firm didn't really benefit by those curators. At that point in time, those curators really in the whole scheme of things meant really little to the productivity of our law firm.

But the firm did benefit by the curators, if the firm made \$10, it benefited by making \$10. But those curators didn't really have any major benefit to our law firm.

Q Mr. Creely, I'm not asking you whether you wanted the curators. I know you've said you didn't want them to begin with. What I'm asking you is the reason that you and Mr. Amato divided the money you

gave to Judge Porteous equally is the money was coming in equally to the firm; isn't that right?

A Yeah, right, it was coming to the firm. No matter who -- yeah, it would go into the firm's operating account, correct, equally owned by Mr. Amato and myself.

Q So when you had to pay back a portion of that money, you wanted to pay it back equally, you and Mr. Amato; correct?

A When he wanted cash, we would pay it equally, correct.

Q When the curatorship stopped coming, did you and Mr. Amato stop sending or giving Judge Porteous cash?

A Yes. With one exception.

Q And that's the fishing trip?

A Fishing trip.

Q Mr. Creely, were you interviewed by the FBI in connection with Judge Porteous being considered for a federal judgeship?

A Yes, sir.

Q And do you recall responding to a question from the FBI as to whether Judge Porteous was living within his means?

A I remember vaguely some questions about

that, yes, sir. And I believe I read the summary through one of our innumerable meetings that we had, somebody gave me a summary of what I told the FBI agent. Her name is Ms. Cheyenne, and I forget her last name.

MR. SCHIFF: Could we put up on the screen Exhibit 69B, which is part of the FBI 302.

In this interview with the FBI, the report of the interview states, "Creely advised that he knows of no financial problems on the part of the candidate and the candidate appears to live within his economic means."

Do you recall that's how you answered the question?

THE WITNESS: My answer was I have no reason to doubt -- yeah, I would recall saying that. I have no reason to doubt that statement.

MR. SCHIFF: Madam Chair, at this point I'd move admission of that exhibit.

CHAIRMAN MC CASKILL: Without objection?

MR. TURLEY: We do object, Madam Chair. This is a 302. This would -- this was addressed earlier, before the trial, about this type of material not coming in. We thought it was clear the 302s would not come in. This is not being used for

impeachment. And so, you know, we would object.

This is basically a testimonial statement without chance for examination. 302s generally do not come into evidence. They are generally viewed as unreliable as evidence because it's somewhat recounting -- someone recounting what someone else said in the field. That's why we raised this earlier.

MR. SCHIFF: Madam Chair --

CHAIRMAN MC CASKILL: First, I don't believe we've had any pretrial discussions about 302s. I believe this is the first time that basis has come before us.

I believe that the testimony of the witness and the questions of the witness concerning what he said at that point in time, there was no objection before the language came into the record. In terms of the whole document coming in, we'll take your objection under advisement and then get back to both parties.

BY MR. SCHIFF:

Q Now, Mr. Creely, when you told the FBI that you knew of no financial problems on the part of the candidate, and that candidate being Judge Porteous, and that Judge Porteous appeared to live

within his economic means, that wasn't the truth, was it?

A No. May I explain?

Q Why didn't you tell the truth?

A I'm sorry?

Q Why didn't you tell the truth? You can answer.

A Well, because of the knickknack money that he asked me was the only reason that I assumed he was having problems. I had no knowledge that he was behind in his car note, I had no knowledge that he was behind in his house note.

I knew he was having some problems. He wasn't -- he was having problems getting by, he had four kids, on his salary is what I knew and didn't tell the FBI agent.

Did I know that he was being sued by a bank or anything? I still don't know if that was a fact. Do I know if he was current with his house note? I have no idea. Do I know if he was current with his car note, all those things? I had no idea.

Was he asking me for money? Yes. And if I can, before this statement was given, I began to suspect that the reason he was asking me for money wasn't for the reasons he was asking it for, it was

because he had certain vices or a vice, called gambling, that he was using my money on, not to use it for the things that he was doing.

And that's -- that's my answer.

Q Now, you said that over time you began to think that he was using it for gambling, not for the things he was telling you he needed it for. What was he telling you that he needed it for?

A Tuition expenses, you name it. I don't remember everything he asked for -- saying it was for.

He would have just things. And -- daily living expenses.

Q And so when the FBI asked you was he living within his means and able to make all these expenditures, the truthful answer would have been no, wouldn't it?

A That would have been a more accurate answer, correct, to say no, he was not living within his means.

Q My question was, why didn't you tell him that? Why didn't you tell him that the judge was constantly coming to you for money, that he wasn't living within his means? Why didn't you tell him that?

A I guess the honest and straightforward answer is I didn't want to hurt the man and hurt his appointment.

Q And you thought if you told the truth, the full truth, about his financial circumstances and the payments of cash, that would hurt his confirmation; right?

A I don't know what the FBI knew about Judge Porteous at that point in time. And quite honestly, if that would have hurt his appointment and it was something very material, I should have said it. But I didn't say it. I didn't say that. I said what I said. And it was not accurate.

Q Because you wanted to protect him?

A I'm sorry, sir?

Q Because you wanted to protect him?

A He's my friend. He was my friend, yeah, I wanted to protect him.

Q And you didn't want this to interfere with his nomination or confirmation?

A No, sir, I did not.

Q Do you know how it happened that the FBI came to interview you, who would have given your name to them?

A I have no idea. I believe Judge Porteous

gave them my name, but I'd be purely speculating if I said that. I believe he did give him my name, my guess.

Q And was it your -- the nature of your friendship with Judge Porteous that he could count on you not to talk about the cash and financial problems?

A Well, that's a hard question to go back and answer. But he was a very manipulative person, and maybe that was one of his motivations, yes.

Q Did FBI ask you whether Judge Porteous abused alcohol?

A I'm sorry?

Q Did the FBI ask you whether Judge Porteous abused alcohol?

A It says that they did, and my reply would have been --

Q If I could direct your attention again to Exhibit 69B.

A Yeah, alcohol and prescription drugs.

Q Mr. Creely, let me just repeat what it says on the 302. "Creely has never known the candidate to use illegal drugs or to abuse alcohol or prescription drugs."

Did you tell the FBI that you had never

known the judge to abuse alcohol?

A Yes.

Q Why did you tell them that?

A I guess it's like if somebody asked me if I abused alcohol. Abusing alcohol is an odd thing to ask somebody. You could abuse alcohol in a way that wouldn't affect me. I can't drink. Some people can drink well. He functioned better when he was drinking, in my opinion. I'm not trying to be offensive to anybody, but you know, I didn't -- so he drank more than -- he drank.

Q He drank more than what?

A I'm sorry?

Q He drank more than what?

A Oh, more than what? I mean, I feel compelled to give an answer. I feel like I have to give an answer to you. But drink more than what? He drank more than some people that I knew. Some people don't drink. Some people drink on a daily basis. Some people drink socially. He drank.

Q Mr. Creely, when you say you didn't know whether that constituted abusing alcohol, is that because he could drink a great deal, and as far as you could tell, he could function while drinking that much?

A Yes, sir.

Q So he could tolerate a lot of alcohol?

A Yes.

Q And during these lunches, how much alcohol would you see him drink?

A Sometimes, we would, and I would too, we would have more drinks than we should have.

Q And how many drinks are we talking about?

A Four or five drinks.

Q Each of you?

A Yes. And not necessarily eating. Like when we go fishing and have a couple cocktails together. It wouldn't just be him and me. It would be five or six other people.

Q These occasions when you had lunch, though, where he would have potentially four or five drinks, were these weekdays? Were these days during the week?

A Oh, yes. It would be weekdays most of the time.

Q And do you know whether he had to go back to the bench after these lunches?

A In 1984 to 1994, I would assume he would have to go back to the bench, maybe not. Maybe he didn't have to go back to the bench.

Q Mr. Creely, don't you think this is something the FBI would have wanted to know when they asked you about abuse of alcohol, that the judge would drink on occasion four or five glasses during lunch while on the bench?

A Do I think the FBI would want to know if the judge sometimes drank four or five glasses of alcoholic beverage at lunch?

Q Yes.

A I don't know. If they would have wanted to know that, maybe they could have given me a checklist and said have you ever seen him drink more than one drink or two drinks or three drinks or four drinks. If they wanted to know if on occasion he drank more than four drinks at lunch and that was the intent of that question, I grossly misled them.

Q Mr. Creely, isn't in part the reason you didn't tell the FBI about his drinking is that you didn't want to hurt his chance to be nominated?

A Correct; yes.

Q Did your firm, Amato Creely, play a role in Lifemark versus Liljeberg?

A I don't know what role Amato & Creely played. But Jacob Amato was involved in that case. I have never seen an employment contract. Maybe

someone one day will show it to me. I don't know who the employment contract was executed between, whether it was just Mr. Amato or Amato & Creely. I've never seen the employment contract on that. Was Jake Amato involved in that case? Yes.

Q You wouldn't have to see the employment contract to know whether what Mr. Amato got as a result of his work on that case, you would get half of it; right?

A Yeah, theoretically, I would get half of it, if anything were to come out of it and if we were still partners at that time. We didn't have a perfect marriage, and we eventually dissolved our partnership. But yeah, theoretically, I would stand to benefit if that money would be earned by that case.

Q And you understood that he was spending an extraordinary amount of time on that one case; right?

A Exclusively.

Q Did you raise a concern with him about putting all of his eggs in one basket?

A Was I concerned with him?

Q Yes.

A Yeah, yes, sir, I was concerned. Because

we had a huge overhead, and I was carrying the water for two years or however long, and I was tired of doing it.

Q If Mr. Amato was successful in getting a contingency fee of \$500,000 to \$1 million, that would have been a substantial recovery for your firm, wouldn't it?

A Mr. Schiff, we made million-dollar fees. I made half a million, million-dollar fees in a case, not every day, but a lot. Yeah, that's a nice fee. I would have loved to have gotten that.

Q You weren't personally involved in trying the case or any part of it?

A Not any part of that. That file wasn't even maintained in our office, from what I understand. I've never seen -- I wouldn't know Mr. Liljeberg, like I told you before, if they walked in this room.

Q But you did at least go by from time to time to get some understanding of the case or watch Mr. Amato do some questioning?

A I went by the courtroom one time because Don Gardner was telling me the case was going horribly for us, who was the lawyer on the other side, who I was very close to. And my law partner

was telling me the case was going great. And I said I've got to go see what's going on. I walked in the courtroom, and Judge Porteous is chewing out my law partner, screaming at him for asking some stupid question, and I turned around and walked out.

Q And you wanted to get to the bottom of whether Mr. Gardner was right or Mr. Amato was right because Mr. Amato was spending a lot of time and you stood to make a lot of money if he was successful; right?

A I'm sorry, sir?

Q You wanted to get to the bottom of who was right between Mr. Gardner and Mr. Amato because your firm stood to make a lot of money if Mr. Amato was right and he was spending a lot of time on the case?

A Yeah, and if he wasn't doing good, I would be able to maybe talk some sense into his head to settle the thing or get out of it or do something else. I didn't know what I would have done. I wanted to find out what was going on. I walked in the courtroom, and I didn't like what I saw.

Q What did Mr. Amato say about that?

A Mr. Amato at that time was a very condescending person and basically told me to mind my business about that case.

Q And did Mr. Amato tell you that he was pretty confident he would be successful in the case?

A Yeah, I think, yeah, he did.

Q So notwithstanding what the judge may have been showing during the trial, Mr. Amato was pretty confident he was going to win?

A I was only in that courtroom for maybe 10 minutes one day, five minutes.

Q I'm asking you based on your conversations with your partner. Notwithstanding what you saw in the courtroom, Judge Porteous's display, your partner thought he was going to win; right?

A He thought he was going to win.

Q Did he tell you why he thought he was going to win?

A Why he wanted to win?

Q Did he tell you why he thought he was going to win?

A He thought he had a good case. He thought he had a winner. He thought he had a good case.

Q Do you recall during the pendency of the Liljeberg case there was an anniversary party for Judge Porteous being on the bench for five years?

A Do I recall a party for him being on the bench for five years?

Q Yes.

A I had no knowledge of that whatsoever until these proceedings started.

Q Did the law firm of Amato Creely contribute money toward that party while the Liljeberg case was pending?

A You're asking me did we pay for it?

Q Yes.

A I've found out since this case has begun that we paid for it, yes, sir.

Q Do you know how much that was? Do you know how much that was?

A I thought I saw a record to the amount of \$1,400 or something like that. But I could be -- I could be off a few hundred dollars. I don't know what the amount was. I remember looking at a transcript someplace.

Q While the case was pending before Judge Porteous, do you recall attending a bachelor party in Las Vegas for Judge Porteous's son?

A Yes, sir, along with 20 or 30 other people and Mr. Gardner.

Q And did you pay a portion of the bill for the meals at that -- on that trip?

A I paid a portion of the bachelor party

dinner, which was -- it's in the record. It was under \$500. I was at a table with three other men at a steakhouse in Las Vegas, and people were drinking and eating. I think my part of the bill was about -- was between \$450 and \$500.

Q Did you also pay for Judge Porteous's hotel room?

A That was brought out, and I didn't realize that at the time, but you have shown me documentation that I did pay for his hotel for him.

Q And you have no reason to question the billing statement, do you?

A Not after I went over that information with the people on your staff last night did I finally understand where you were coming from with that particular issue.

Q And did looking at the documents refresh your recollection about whether you paid for the judge's room?

A They were documents that I didn't think I could dispute, but they showed that I paid, I think, a \$69 hotel room, and apparently, he made some charges to his room. If I recall the bill that I looked at last night, was he made some charges to my room. I don't know whether there were charges one

day that were like a bunch of people, young people that were hanging out around the swimming pool, and we had drinks. I came across the group, and I don't know if that got charged to his room or not.

Q But it didn't surprise you to see documentary evidence that you had paid for these expenses for the judge?

A You showed me documentation last night that I paid for expenses, yes, sir.

Q And that didn't surprise you; right?

A We've been talking about this for several months, Mr. Dubester and I, and it more or less disturbed me but did not surprise me.

Q Did you also go to a strip club with Judge Porteous and his bailiff on the trip?

A I walked in the front door and out the back door. We talked about that before, yes, sir.

Q Before you walked out the back door, did you pay for any personal entertainment for the judge and the bailiff?

A I gave the man that was the bouncer, I guess you would say, \$200.

Q And the \$200 was for a lap dance for the judge and for the bailiff?

A Apparently so, yes, and I left the party.

I went back to another hotel.

Q During any point when you were providing cash to Judge Porteous, did Judge Porteous's secretary come to your office to pick up the cash?

A On one occasion. I believe the only time, the occasion that we're getting to, is the \$1,000 fishing trip thing. I'm anticipating what you're asking me, and yes, she did come buy and pick it up. I'm told she came by and picked it up.

Q And this was the 2000 or 2500 that was referred to earlier?

A And that was what we went through my records to determine there was \$2,000, I believe, that Mr. Amato indicated to me that he wanted to contribute to the judge's son's -- originally, I thought it was tuition, and then I was led to believe it was for -- I was told it was for a wedding expense or something.

Q So the \$2,000 that the judge had asked for on this boating trip, you and Mr. Amato split that evenly?

A Whatever the judge asked, Mr. Amato -- Mr. Amato told me after the fishing trip that I needed to give him \$1,000 to give to Judge Porteous, and we had a conversation about that. And I avoided

doing it for a long time. Hence, I think is the reason why his secretary, from what I understand, came by, because I avoided doing it. I avoided giving my portion.

Q This would have been his federal secretary?

A I'm sorry?

Q This would have been his federal secretary while he was on the federal bench?

A Yes, sir.

Q Came over to get the cash in an envelope?

A That's what I remember, yes, sir. I was told.

Q Do you recall having any conversation with the judge about his sending his secretary to pick up cash from your office?

A I may have told him that it wasn't a good idea.

Q Why did you tell him it wasn't a good idea?

A Obviously, there was a case under advisement before the judge.

Q Did other judges besides Judge Porteous ever send you curatorships?

A Yes, sir.

Q Did any of those judges ask for cash back from the curatorships?

A No, sir.

Q Can you tell me anything further about what Mr. Amato told you when he asked you for the cash after the fishing trip?

A Do you want me to tell you the whole story that Mr. Amato related to me about the cash and the fishing trip?

Q Yes.

A There was a fishing trip that I wouldn't go on, didn't want to go on. And Judge Porteous and Mr. Amato went on this fishing trip. In general -- I don't remember word for word how it went. It was 11 years ago. But the judge and he ended up in some sort of a conversation, either on the front or the back of the boat where the judge became -- loss of words, became emotional about not being able to satisfy or pay for the obligation that he needed money for and asked Jake Amato to help him out. And that was what was related to me. Whether that, in fact, took place, I have no idea. That's what Mr. Amato told me.

Q And both of you decided that if you were going to give money to the judge, it was going to

come from you both equally?

A Yeah. That's what Mr. Amato decided, that we would give half the money to the judge, and I eventually did it.

Q Am I correct, Mr. Creely, that you have forfeited your law license as a result of the matters we've been discussing today?

A I'm very sorry, Mr. Schiff. I didn't hear that.

Q Am I correct that you have forfeited your license as a result of the matters we've been discussing today?

A Yes, sir.

MR. SCHIFF: Madam Chair, at this time I have no further questions.

CHAIRMAN MC CASKILL: Professor Turley? We will take the midafternoon break in, give or take, 20 or 25 minutes.

MR. TURLEY: I expect that this examination will be longer than that. Is it possible to take a break now so I don't have to stop my examination?

CHAIRMAN MC CASKILL: The problem is we're planning on going fairly late. And so I think we need to wait to do the break so that we kind of are

equally spacing out the time of breaks. So why don't you get started, and then you can kind of plan where would be a logical place to stop and restart after that.

MR. TURLEY: Very well. Thank you.

CHAIRMAN MC CASKILL: Thank you.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Mr. Creely, good afternoon.

A Good afternoon.

Q I also will try to speak up so you can hear me. It's sort of a large room. I'm going to start with a couple of simple questions to try to clarify some of these matters. In one of the things that came out of your deposition, did Judge Porteous ever ask you for a percentage or portion of the curator funds back?

A No.

Q You said no, sir?

A No.

Q Did you have an agreement with Judge Porteous to get half the curatorships assigned to you?

A No.

Q Thank you. Let's take a step back. You

periodically loaned money or gave money to Judge Porteous; correct?

A Correct.

Q You did that as a friend; right?

A As a friend.

Q How long were you a friend of Judge Porteous?

A Really since I first met him. I liked him, and as I indicated to Mr. Schiff -- and I will repeat myself if you would like me to -- I looked up to him. He was like my hero at one point in my life.

Q The House has referred to you as a crony of the judge. At that time were you a crony?

A A what?

Q A crony. They referred to you as a crony of the judge. Did you view yourself as a crony of the judge?

A No. I was his friend before he was a judge.

Q At any time did you become a crony of the judge?

A No, I don't believe, if -- the way I understand the word, I was not a crony. What do you mean by a crony?

Q That's what the House referred -- I want to know if that's how you viewed yourself, your relationship with the judge.

A No, I didn't view myself as a crony of the judge. I didn't have any business in front of the judge. I had very, very, very limited business in front of the judge.

Q Now, Mr. Creely, you started loaning or giving money to the judge before any curatorships came in; correct?

A I didn't lend him anything. I gave him money before the curators came in, sir.

Q And you were giving him money for a fairly long period of time before the curatorships; correct?

A Yes, sir.

Q And when you say that you estimated that, in your relationship, you may have given him about \$10,000, that included the whole period of the relationship; correct?

A Generally, yes. That's my understanding, yeah.

Q So you were trying to calculate in your relationship how much money did I think I gave the judge when you agreed it might have been around

10,000; is that correct?

A Yeah. And I was trying to go back to 1984 and before then, 1979 and '80, and make a calculation in my mind. But generally say '84 on, that would be a fair assessment of what I may have given him.

Q So that figure was for money you gave before the curatorship started and money you gave after the curatorship started; correct?

A Generally, yes.

Q Did you ever give any money to the judge as a bribe?

A No indeed.

Q I'm sorry, sir?

A No.

Q Did you ever give money to the judge that you thought was a kickback?

A No, sir.

Q Did you ever think you had a quid pro quo arrangement with the judge?

A No.

Q What's your understanding of a quid pro quo arrangement?

A Getting something in return.

Q And what's your understanding of a

kickback?

A A kickback is much like a bribe, I guess.
I would correlate those two together.

Q Did you ever give him money to influence
him as a judge?

A No, sir.

Q Thank you. You just testified -- did you
give him money in a scheme to get more curatorships?

A No, no, sir.

Q Because you don't want curatorships;
right?

A No.

Q Is it your experience as an attorney that
judges often give curatorships to people they know?

A Yeah, particularly from recent readings of
the newspaper, the Times-Picayune newspaper in New
Orleans, it happens quite regularly.

Q Do you know of any rule that existed then
or now that made that unlawful?

A No, sir.

Q You believe you may have gotten some
curatorships from other judges; correct?

A Yes, sir.

Q Were you friends with other judges in
Gretna?

A Yes, sir. The older you get, the more people you know end up being judges. They were good friends when they were lawyers, and they remain friends when they become judges.

Q Did you have a good record in handling curatorships?

A I didn't handle curatorships, because the types of curatorships that I had were purely ministerial. I didn't have to do any kind of -- they were advertisements and filing evidence, which is purely clerical. I didn't go to court for any of these curators.

Q Have you heard of some attorneys that would not send out notices on curatorships and cause problems like that?

A I've never heard of any attorney that would have done that. It wouldn't have been something I would be particularly interested in.

Q Do you recall, before this call from the judge -- you had testified about a call with the judge coming in about curatorships. Do you remember that discussion with Mr. Schiff?

A Generally, yes, I do remember that.

Q Do you think before that call you had ever gotten curatorships from Judge Porteous?

A I'm sorry?

Q You had received curatorships before that call; correct?

A Right.

Q And do you recall when you got your first curatorship from the judge?

A No, sir.

Q Do you have any idea?

A No, sir.

Q In fact, did you keep track of how many curatorships you had at any given time?

A Yes, sir.

Q And did you get that, what, on a daily basis? Weekly basis?

A Every time we opened a file, it was generated. Before they had computers, it was manually generated. After we got computers, they became computer-generated. We had records on everything. We had records on how many asbestos cases I had. We had records on how many -- every kind of cases. Jake would devise records, lists for everything we did.

Q I'd like to ask you some questions about your work in Gretna as an attorney. You said that you knew a lot of judges in Gretna; is that true?

A Yeah.

Q Do you think you knew virtually all of them?

A Yeah.

Q Were you good friends with a lot of them?

A What do you mean by "good friends," if you don't mind?

Q Would you see them socially?

A Yeah, some of them.

Q How many judges do you think you saw socially?

A By "socially," you mean what?

Q Going out to meals, lunches, dinners, drinks.

A Pretty much most of them.

Q And you don't know of any rule that said you shouldn't see judges socially, did you?

A No.

Q Isn't that very common?

A Yeah, it's pretty common, very common.

Q Let me ask you a question about Gretna. I know that Jefferson Parish is pretty big.

A It's about 150,000 people, I think.

Q But Gretna's legal community is relatively small, isn't it?

A Is Gretna --

Q No, the Gretna legal community is relatively small?

A The lawyers practicing in Gretna?

Q I'm sorry?

A The lawyers who practice in Gretna?

Q Yes.

A Gretna is a small city, but the lawyers who practice in Gretna, it's a little city. It's probably not unlike small cities around Washington, D.C. It's a little, small city.

Q Did most of the lawyers and judges in Gretna tend to know each other?

A The lawyers in Greta knew each other. The Gretna lawyers knew the judges, but other lawyers outside of Gretna also knew the judges. It wasn't just Gretna lawyers that knew the judges. I mean, anybody that practiced in Jefferson Parish would know who the judges are and would know the judges.

Q Was it common for lawyers to go out to lunch with judges in Gretna?

A Yes.

Q Was it common for lawyers to pay for the meals of judges in Gretna?

A Yes.

Q In fact, didn't you testify that in your entire career, you only remember one judge ever buying lunch?

A I think it was dinner. I may have to correct myself.

Q A dinner?

A Yes.

Q But one time?

A One time.

Q So except for that one time, lawyers generally paid for the judges; correct?

A I don't know about what other lawyers did. I know what the lawyers that I knew about did. Sometimes we would split the bill for the judges. It wouldn't necessarily just be a lawyer and a judge. It would be a lawyer, a judge, and maybe four or five other lawyers. It would always be at public places.

Q Was it your understanding that there's any rule prohibiting you from paying for lunch of a judge?

A I don't know of any rule that would prohibit that.

Q Are you familiar with a place called the Courtroom Cafe?

A Where?

Q The Courthouse Cafe? Do you remember a place called the Courthouse Cafe?

A The Courthouse Cafe? It's been a while since I've been to -- actually practiced in Jefferson Parish, but if this has any real significance, I will think, but I don't offhand remember a Courthouse Cafe. I know there was a coffee house something or the other over there, but in the last five years of my practice, I didn't have any cases in Jefferson Parish. I haven't really tried any case in Jefferson Parish in the last 10 years.

Q It might have been called the Whiteside Cafe?

A Whiteside's, yes, sir.

Q You remember that name?

A Yes, sir.

Q Do you remember that in the Whiteside Cafe, wasn't there a table that was set aside for judges and lawyers?

A I never sat at it.

Q I'm sorry, sir?

A I didn't sit at that table. I didn't go to the restaurant very often either.

Q Did you buy lunches for other judges when you were working in Gretna?

A Yes, sir.

Q Did you sometimes appear before those judges?

A Yes, sir.

Q Did other lawyers buy lunches for judges they appeared in front of?

A Sure.

Q Do you remember many recusal motions in Gretna for judges to recuse themselves because of socializing with lawyers?

A I'm not aware of anybody that filed a motion to recuse a judge because he or she brought their lunch.

Q Do you have any memory actually of any recusal motions? Do you recall what the recusal motions were for that you recall? Do you remember any past recusal motions in Gretna?

A Yeah. I'm sorry. Forgive me. Yes, sir.

Q But none of those recusal motions that you recall were because lawyers were just friends of judges?

A Not that I recall.

Q In fact, wasn't it routine for friends of

judges to appear in front of them in Gretna?

A Yeah. Not just in Gretna, but in Orleans Parish, too.

Q I don't mean to suggest this is just Gretna. You're saying outside of Gretna, that was a very common thing, to have friends appear in front of judges?

A Outside of Gretna?

Q Yeah.

A Yeah.

Q In fact, didn't you testify that when you went to Colorado, that you found that lawyers bought meals for judges in Colorado as well?

A I've been to a few social functions at this little golf course that they have up there, and I didn't find things much different going on in Colorado than I did -- when I say "going on," socializing.

I have to tell you that -- and maybe I shouldn't -- a lot of judges that I was friendly with or have had friendships with have ruled against me on major cases, even though I was their friends. I didn't win all my cases. Even Judge Porteous caused me some substantial problems in several cases, and I had to get him reversed on one of them

in particular. But I didn't relate a lunch to getting a favor from a judge. I didn't relate that.

Q And wasn't it true that lawyers in Gretna often dropped off gifts with judges, like they do in other cities?

A Yes.

Q What types of gifts did lawyers drop off to judges?

A It changed over time. A lot of judges were starting to refuse to take gifts toward the end. But in the beginning of my practice in the '70s, lawyers would give judges things, wine at Christmas time, hams, turkeys, things of that nature. But that tapered off toward the end. It started around -- it just started tapering off.

Q Did it start to taper off around the time of the Wrinkled Robe investigation?

A Probably, yeah.

Q When Mr. Schiff --

A That would be, what, '99 roughly?

Q Yeah, I can't recall the exact date that it started.

When Mr. Schiff was asking you about drinking and the FBI, you initially said that you thought you were saying a truthful thing, that you

didn't know of the judge abusing drinks; right?

A My statement to the FBI speaks for itself. I think what Mr. Schiff was asking me is to quantify what overdrinking means in my mind. Did Judge Porteous drink more than most people? Yes. Should I have said that he did? It's a question that maybe I should have said oh, by the way, I think he drinks more than most people or he drinks too much. But I made the statement that he did drink more than most people.

Q What I'm asking you about in your answer to Mr. Schiff today is you said that sometimes he would have four or five drinks when he was fishing, for example; correct?

A Right; yes, sir.

Q And you were saying that when you would socialize sometimes with the judge, he could have four drinks or five drinks; correct?

A He could have more than that.

Q On some occasions, did he have just one drink? Let me ask you this: Did you keep tabs on how much he was drinking?

A Don't laugh at me.

MR. SCHIFF: Madam Chair, could he answer that last question?

THE WITNESS: I don't keep track but usually, he would have more than one drink.

BY MR. TURLEY:

Q Did you see any other judges have more than one drink at lunch?

A Yes. Oh, at lunch? No, not all of them. A lot of the judges I went to lunch with didn't have anything to drink. A lot of them were recovering alcoholics, one in particular, and didn't drink, or some people didn't drink at lunch. I didn't like particularly drinking at lunch because I had to go back to work and couldn't function if I drank more than one drink at lunch.

Q You mentioned just a few minutes ago that you had a few cases in front of the judge; correct?

A Yes, sir.

Q Didn't you earlier testify that you thought you had three cases? Was it three?

A That's what I recall.

Q In your entire relationship, you thought you had maybe two or three?

A I think three. Probably there's -- Tommy was in the district bench and did primarily real estate and divorce work. My trial practice was limited to divorce trial and domestic trial

practice.

On occasion, when there were separate judges that heard divorce cases, the general 24th Judicial District Court didn't handle divorce cases. I think the three or two minor judges, the most recently elected judges would get the domestic bench, and there would be some rotation when a new judge got elected. Then the most senior divorce judge would move on to the main bench.

There may have been an occasion or two where I settled a case and the divorce judge, we would call them, the divorce judge wasn't there or -- to put the settlement on the record and we would go walking around the main building of the courthouse looking for a judge just to say can we put this record on, this settlement on the record and have you bless it, so to speak, and sign this consent judgment or render a judgment. And then we would have a transcript and bring a judgment back. Maybe he did that a few times for me. But both lawyers would be there. There would be a stipulation we would put on the record.

Q So did -- in your experience, did Judge Porteous handle many divorce cases?

A He may have. I don't know. He didn't

handle any of my divorce cases that I can recall.

Q Do you recall an interdiction case proceeding before Judge Porteous?

A Yes, sir.

Q Was that a relatively simple family matter involving an elderly lady? Could you describe it? Was it a big case or small case?

A Oh, it was a big case in my mind because of what was happening to this lady, but it was not a big case compared to cases that I've handled. It was not a big case. It was an elderly woman who was being mistreated by her daughter, and we were trying to get -- if I recall correctly, her interdicted and have her live with her grandchildren.

Q Some people may not be familiar with an interdiction proceeding. How long does an interdiction proceeding usually last?

A It depends on who the other lawyer is. I don't try interdiction proceedings as a general rule. I've tried a few. But Don Gardner asked me to handle this case with him, and it took half a day, I guess, three or four hours.

Q Three or four hours?

A If I recall correctly.

Q Now, you do remember a jury case, correct

me if I'm wrong, named Serigny?

A Something like that, yes, sir. Serigny.

Q That was a construction dispute, wasn't it?

A Yeah. That was a dock failure in a fishing place called Delacroix Island, Louisiana.

Q Didn't the judge rule against you on a critical postverdict motion in that case?

A Yes, sir.

Q So in that case, the jury had ruled for you; correct?

A Correct.

Q But then Judge Porteous ruled against you in that posttrial motion; correct?

A It's not that simple. The jury ruled in my favor and rendered a verdict. It will take two seconds. At that time we had a bunch of bank failures and insurance company failures, I don't recall, maybe 15 years ago. This insurance company, I believe the name of it was Pelican Insurance Company. This was a subsequent federal trial, and I was called as a witness in that case. Be that as it may, it was rumored to be going bankrupt, and I was concerned if they were going to go bankrupt, I wouldn't collect my judgment for my people. So they

posted surety bonds so that they could take an appeal.

And I believe the surety bond, if I remember the facts correct, was a subsidiary company of the insurance company against whom the judgment was rendered. So I figured if the insurance company went broke, the bond was going to be no good. My motion was to test the solvency of the surety, and Judge Porteous ruled against me on that particular case.

Q And was that worth about \$400,000?

A It was around \$400,000 roughly. With the interest and everything, I can't calculate what the interest and everything was on the case sharply. I believe the jury awarded me in the neighborhood of 385, 400, something like that, I don't know. And the company went broke, and I lost my judgment.

Q You lost the 400,000?

A I lost the whole verdict.

Q Due to Judge Porteous's decision?

A I'm not saying it was due to his decision. I'm saying it was due to the fact that the company went broke. If he would have let me test the solvency of the surety, maybe he would have ruled against me, maybe the company would have been proven

solvent. I don't remember all of those details. But because I didn't -- maybe if I would have tested the solvency, they would have paid me my money. I don't know. But because of his ruling, he ruled I couldn't do it.

Q But you put in that motion, correct, because you were afraid that you would lose the judgment?

A Yes, sir.

CHAIRMAN MC CASKILL: Professor Turley, I think we're going to take a break now.

MR. TURLEY: Could I just finish this line of questioning?

CHAIRMAN MC CASKILL: Yes, you may.

MR. TURLEY: Thank you. I actually don't have many questions left.

CHAIRMAN MC CASKILL: As long as you don't wander in this line of questioning.

MR. TURLEY: In this time frame, I don't tend to wander.

BY MR. TURLEY:

Q Did you take the judge up on appeal in that case?

A I believe so.

Q You believe so, or you know so?

A If I had to guess, I would say I think I took a writ, and I was denied, I think. I'm pretty sure I did take a writ, an emergency writ, and it was denied by the state 5th Circuit.

MR. TURLEY: That's all I had on that line.

CHAIRMAN MC CASKILL: Thank you.

We're going to take a break until -- since it's almost 4:00, let's go to 4:20. I want to tell the committee members and the parties that we're going to plan on going until at least 6:30 tonight. So when we get back at 4:20, we're going to stay for two-hours-plus before we adjourn for the evening. Oh, we have a vote at 5:30. We will figure that out when the vote comes.

(Recess.)

CHAIRMAN MC CASKILL: The hearing will be back in order, and just so the members know, it is the plan of the committee to hear testimony until the vote is called, and when the vote is called, I know for a fact we can get over and vote and back in 10 minutes if you don't stop and gossip. So we're going to give everybody 10 minutes to get over and vote and back at the point in time the vote is called.

SENATOR WHITEHOUSE: The same 10 minutes?

CHAIRMAN MC CASKILL: Yes, the same 10 minutes. We have to, because we have to have seven in order to proceed.

Professor Turley, I believe you were questioning the witness.

BY MR. TURLEY:

Q Thank you, Mr. Creely. I want to say that I don't mean to be yelling, but I want to make sure that you can hear me. And so if you can't hear me, let me know, but I'm trying not to be screaming at you so that you can hear everything we're asking.

I want to get back to the cases that you had before Judge Porteous. You stated earlier that Judge Porteous has never shown favoritism towards you in court; correct?

A Not that I'm aware of.

Q That he ruled on cases that you had with him on the law, not your friendship; correct?

A The way I appreciate it.

Q Am I correct, did you have one case in front of him as a federal judge, this Union Planters Bank case?

A It wasn't in front of him. It was a removal action from state court, a class action in

state court, and it was removed by the defendants and randomly allotted to Judge Porteous in the federal court.

Q So it was randomly assigned to him? It was randomly assigned to him?

A Right. I didn't file the motion to remove on the motion that was filed. The defendants did to get it out of state court, which was in New Orleans parish, not Jefferson Parish. They moved it to federal court.

Q I'm just interested in a small part of the case. My understanding is that you needed a restraining order in the case; correct?

A No. I didn't need a restraining order in the case. That's the problem. He granted a restraining order in the case.

Q So you did not want that restraining order?

A No, I didn't want it, no, sir.

Q Thank you for that clarification.

A Do you want me to explain it to you?

Q Actually, I'm going to ask you something else, because I don't want to get into the weeds on the case because I'm more interested in your relationship with the judge. Did you ultimately

take him up in front of the 5th Circuit on his decision in that case?

A Myself and co-counsel did, yes.

Q Because he had ruled against you and your co-counsel?

A Yes.

Q And you got him reversed, did you not?

A Yes, sir.

Q Now, in your prior testimony, do you recall saying that the judge told you that you would be, quote, wasting your time on this motion?

A Something to that effect is what he told me. I don't want the panel to misunderstand. It was a temporary restraining order. It was a TRO filed by the defendants in a removal action. The TRO requires -- and I don't know what the exact rule is, but the Court has to notify opposing counsel. Defense lawyers have to notify opposing counsel. You tell them I'm going to file a temporary restraining order to enjoin the state court judge from issuing a discovery motion on what would have been a huge class action but for the ruling. I was notified by telephone, if I'm not mistaken, and he said I'm granting a temporary restraining order, and you have to set the preliminary injunction hearing

within a particular time frame. After the TRO was granted, and I don't know what that time frame is. He said you can make a record if you want but I'm ruling the same way I did as when I granted the TRO, but you can make a record.

Q Thank you for that. And he ruled the way he thought the law required him to rule; correct?

A I don't know what he thought. He ruled against me. He cost me about \$1 million, too.

Q \$1 million? By the way, you told Mr. Schiff that your firm would -- it was not uncommon for your firm to bring in large verdicts or fees; correct?

A That's correct.

Q And some of those would be \$500,000 or \$1 million?

A Some occasions, yeah.

Q You also told Mr. Schiff that at some point you simply started to see less of the judge; correct?

A A lot less.

Q That was around the time he became a federal judge; correct?

A That's when he became a federal judge, correct.

Q Isn't it true you were still in Gretna, but he was in a different office at that time as a federal judge; correct?

A It was in a different part of town at the time.

Q So you didn't see him as much physically in Gretna?

A I could have seen him as much in federal court as I did in Gretna if I cared to. I just didn't care to. I was very busy on my other cases. I didn't want to go do all that.

Q And I want to confirm something from your deposition. You never directly gave Judge Porteous any money when he was a federal judge; right?

A No.

Q And the money dealing with the wedding gift in 1999, you gave that money to Mr. Amato; correct?

A Correct.

Q And you previously testified that you gave the judge money because he was your friend; right?

A Yeah.

Q You didn't give it to him to bribe him?

A No. We've been over this. No, I didn't give him any bribes.

Q And you didn't give him the money to get curatorships; right?

A No.

Q And in fact, you testified earlier that you, on occasion, have given cash to other people; right? I believe you testified about giving \$200 to a homeless man once?

A Yeah, I used to do that.

Q And are you known as a generous person in that sense?

A Yeah, I consider myself a very generous person. I used to live in the French Quarter, and I happened to cross a lot of unfortunate people from time to time that I would feel obligated to do something for, buy food or whatever.

Q And you often dealt with cash, didn't you? You carried a fair amount of cash with you?

A I don't know what you call a fair amount of cash. I would get a \$1,500-a-week draw.

Q Does that mean you would carry as much as \$1,500?

A Until I got home and my wife got into it and things like that. But yeah, I would leave my office with \$1,500.

Q When you gave cash to Judge Porteous, was

that because you wanted to conceal anything, or you just gave him cash because you had cash?

A I didn't want to conceal anything. I mean, cash, yeah, I gave him cash.

Q In fact, you've never denied giving gifts to Judge Porteous; right? You've always admitted it; right?

A Right.

Q And you never tried to hide giving gifts to Judge Porteous; correct?

A No.

Q And in fact, you didn't see any problem with giving gifts at the time to friends, including Porteous; right?

A No, I didn't see a problem at the time, because I didn't have business in front of him.

Q Now, when you talked about this phone call that came in from the judge asking about curatorships, that was to your secretary, correct, not to you?

A Originally, it was to my secretary. I believe subsequent to that he may have called me himself.

Q Now, in your deposition testimony, you stated that you did not see a relationship between

the gifts and the curatorships; correct?

A I said that today, too.

Q Right. And you didn't stop giving him gifts just because the curatorships stopped; right? You didn't stop because you were getting no more curatorships? It was for other reasons; right?

A It was for other reasons, yeah.

Q Let me ask you a question. You said something to Mr. Schiff that -- you said that you never saw the contract in the Lifemark case; correct?

A Correct.

Q And you said that --

A To the best of my ability, I don't recall seeing a contract.

Q Understood. And you said you didn't know whether the contract was just to Amato or to Amato & Creely; correct?

A Correct.

Q Now, you said that Mr. Amato and you didn't have a perfect marriage. Can you explain that a little further?

A Yeah. We -- well, some people continued practicing law together. For whatever reason, he and I drifted apart. My practice had taken a

completely different complexion in that I began doing totally different things than I did before with other law firms, large law firms from other parts of the United States of America -- from other parts of the country. I started doing mass tort litigation, complex tort litigation issues. I began partnering up with other law firms to do various types of litigation outside of Jefferson Parish, and he and I didn't really have a relationship of any sorts.

Q Okay. And you largely handled separate cases. Was it rare for you to practice in the same case, the two of you together?

A I can't recall ever trying a case with Jake.

Q And you said you would theoretically get some of the fees from Lifemark. In order to know that, would you have to look at the contract?

A I would have to look at the whole circumstance of what would have been going on when we got paid. I didn't anticipate getting paid on Lifemark, if we ever got paid, for years and years. These cases never end. Big cases, all my big cases, they never end in a trial. They are endlessly, are on appeal forever, it seems. I'm just settling

cases that have been on appeal, but I haven't been practicing law for a year. Not me, but lawyers that work for me.

Q Mr. Creely, let me ask you, did you ever sit down with Judge Porteous and lay out for him how your partnership was structured and how you divided up proceeds?

A No. I'm sure he had a general idea. He was a very good friend. I don't know. I don't know if he knew how we divided things up. I'm sure he had a general idea. We were partners.

Q Now, isn't there a lot of different types of partnerships in law firms, that law firms differ in terms of how much partners get from any given case?

A Yes, sir. Some of them are, yeah.

Q And you never sat down with Porteous at any time and said I want to show you how the -- when we bring in money how we divide it and pay for overhead? You never did that; correct?

A I don't believe I ever did that, but I'm sure he knew that.

Q I mean, he knew that you were partners; correct?

A Yeah.

Q Now, on these trips that you took, the fishing trips and hunting trips, did you take other judges on those trips on occasion?

A Sometimes.

Q And when you were the host, did you just pay all the expenses?

A Whenever I invited somebody to go fishing, it would have been an expense that I would absorb. It's not that big of a deal to spend \$10 on gasoline and \$20 on live bait and to go fishing in the marsh 20 minutes away from my house. It's not something you would want to divide up. It would be like inviting somebody over for dinner and asking them to pay for the steak that they ate or something.

Q You mentioned on some of these trips there was a deal that if you had 10 people, one person could come for free; correct?

A That's basically the way I remember it. Again, we're going back 15 years ago. Okay? I'm trying to be as forthcoming and as honest --

Q I know you are. I understand entirely. So you don't have any recollection of whether the judge got one of those -- whether he got a free trip or did not get a free trip? You just don't remember?

A My testimony would be as I gave Mr. Schiff. That was my testimony. If you want me to try to repeat it, I will.

Q No, that's okay. I do want to get back, remember you were talking to Mr. Schiff about that steakhouse dinner? Do you remember he was asking you about a dinner at a steakhouse? Do you recall that, talking about that in your testimony?

A Las Vegas?

Q Yes.

A Yes, sir.

Q And you paid for a portion of that dinner; right?

A Yes, sir.

Q Now, was this a situation where various people put in their credit cards to divide up the dinner?

A Yeah. It was 20 people. I wouldn't have offered to have paid -- there were, say, 20 people eating steaks and drinking. Most of them were younger people, younger than me at that time, even at that time. Okay? They were younger than me. People have a couple of drinks when they go to Las Vegas. But everything that happens in Las Vegas apparently doesn't stay there. Whatever happened, I

ended up with \$400 to \$500 worth of the dinner. The dinner was probably \$2,000 to 3,000. I have no idea what the dinner was.

Q Did you pay attention to who was throwing their credit cards in?

A No.

Q And that happened a lot; right? When people go out drinking, they just throw their credit cards on the table?

A No, not really. That happens a couple of times, but usually, I get stuck with the bill, if I recall correctly. I usually end up getting whacked with the bill when I go out with a bunch of people. I used to.

Q Oh, really? That was common? You used to get hit with the bill when you would go out?

A Yeah, I used to get stuck pretty good.

Q So you must have been a popular guy to go out to dinner with?

A Not really.

Q Now, you knew Judge Porteous's son Timmy; correct?

A I knew all of his children.

Q And didn't Timmy call you uncle Bob? Wasn't that something he often called you?

A On occasions, and I don't know whether he did it out of respect or out of jest, but he called me uncle Bob.

Q Now, on this fishing trip with Mr. Amato in 1999, you were not on that trip; right?

A Yeah, I wasn't on the trip. I didn't want to go on the trip.

Q It was Mr. Amato that came to you to ask you for \$1,000; correct?

A For the third time, yes, sir.

Q Now, when you paid for things -- let's start with the Las Vegas dinner at the steakhouse. When you paid for things, was that your money, or was that the law firm's money?

A In '99?

Q No. In terms of paying for things like dinner at that steakhouse in Las Vegas during the -- for that wedding --

A That was in '99.

Q Well, when you paid for things like the steakhouse bill, was that your money or the law firm's money?

A It came from the Amato and Creely credit card. Do you want me to give you my opinion as to who earned that money? I think I did. But it was

an Amato & Creely credit card.

Q Did you only have one credit card?

A No. I had a personal credit card.

Q So did you -- that money was not your money, or did you use the credit card, and that was just taken from your portion of the firm proceeds?

A The firm paid for the credit card. It was an Amato & Creely credit card. I had a credit card. Jake had a credit card. And I used an Amato & Creely credit card, unless those records say something to the contrary, but I believe it was an Amato & Creely credit card.

Q You mentioned that you only went once to the Court in the Lifemark case; correct? Do you recall that testimony?

A Yeah, that's one time I remember, yeah. I believe it was just one time.

Q And I -- and you went there because you said that Mr. Gardner told you the case was not going well; correct?

A That's correct.

Q Now, did you ever -- in that case you said that Mr. Amato told you, quote, mind your own business, correct, when you raised it with him?

A Something to that effect.

Q Did you talk with Amato a lot about the Lifemark case.

A Not very much.

Q Did Amato ever tell you that he thought that the judge would rule for him because of his friendship?

A No.

Q Mr. Gardner that you mentioned is a close friend of the judge, to your knowledge, correct, or he was?

A They're very good friends. I think they still are very good friends. I don't know. Maybe not. They were very good friends at that time.

Q Now, what is your understanding of how Gardner came into that case?

A My understanding? I would just guess. He was brought into the Lifemark case through the other side. I'm guessing that's how I knew. I'm just guessing.

Q Do you have knowledge of a contract that he had to get \$100,000 to appear in the case?

A I saw that contract some weeks ago for the first time.

Q Let me ask you -- you've been a lawyer a long time. Have you ever seen a contract in which a

lawyer was promised \$100,000 if he could get a judge to recuse himself?

A No, sir. Well I did. I saw the Lifemark contract.

Q Sorry?

A The Lifemark contract. I never seen one other than that.

Q Now, you testified earlier that after your testimony in the grand jury, your immunized testimony was sent to the state bar; correct?

A That's the way I understand it.

Q Did you ever learn how your testimony got to the state bar?

A Secondhand.

Q And what did you learn?

A I learned that -- I was told that somebody suspected someone from that table sent it to the Louisiana Bar Association.

Q And who was that that they mentioned?

A Mr. Baron.

Q Have you ever been told that you could face a perjury charge if your testimony deviates from your prior testimony in this case?

A I haven't been told that. I assume that.

Q But you've tried as best you can to

remember accurately what has occurred?

A Yes, sir.

MR. TURLEY: That's all of our questions for now.

CHAIRMAN MC CASKILL: Thank you.
Congressman Schiff?

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Creely, at the beginning of Mr. Turley's cross-examination, he asked whether the judge asked for a specific percentage of the curator money, and you said no; is that right?

A Right.

Q And that's because the judge didn't ask for 50 percent or 75 percent? He wanted the curator money, but he never asked you for a specific percent, did he?

A No. I don't believe he knew how many curators he sent over there.

Q And in fact, he would call your office to find out how much curator money was over there; right?

A Yeah; yes, sir. That's what I testified to.

Q It was you and Mr. Amato essentially who

agreed to the 50 percent figure? That was what the two of you agreed you would send back to the judge in response to his request?

A That was an estimation of what we -- you asked me how much did we give to the judge, to the judge, and I told you \$10,000 was my best estimate. And I read in transcripts that Mr. Amato said \$10,000 was his best guess. That would make \$20,000 total.

Q Let me direct your attention to your testimony before the Fifth Circuit. And this, I believe, Exhibit 12.

Would you pull that up on the screen?

This is at page 206. At this point, Mr. Woods is asking the questions. Mr. Woods asks you:

"Question: Did Judge Porteous make a request of you after sending you curatorships for a portion of the fees that you were being paid by the court?

"Answer: Yes, sir.

"Question: And how did he do that -- how did he do that?

"Answer: I don't recall how it came about, but it came about. And he got -- and I

can't -- and I can't tell you that he got all the curator fees that we generated, but he got a good portion of the fees that we generated from the curators."

On the following page, Judge Benavides follows up on that answer by asking:

"Judge Benavides: I have some questions I just want to get cleared up before we go on to the time period of the federal bench. One thing you said a "goodly portion." Are you talking, if we want to get more specific, was it more than 50 percent or more than 75 percent of the fee would be paid back?

"The Witness: Judge, I can't -- I didn't hear that. I am very sorry.

"Judge Benavides: Would it be more than 50 percent or more than 75 percent of the curatorship fee?

"The Witness: Be more than 50 percent."

Do you recall that testimony before the Fifth Circuit?

A Let me see it. Yeah, that's what it says. Yes, I do recall that testimony.

Q So to the best of your recollection then, would it be the same now that Judge Porteous would

receive back probably more than 50 percent of the curator fees that he sent to you?

A That testimony was an estimation of what I gave him. And as I tried to tell you last night when we got here, was that when I gave this testimony, I didn't have the list of curators. I didn't know how many curators -- I didn't go to that list that you guys had with the 200 curators on it over 10 years. I didn't have that list with me at the time.

Q What Mr. Woods and the judge asked you in the Fifth Circuit was not how many curators but what percentage of the curator money you sent back, and your testimony at the Fifth Circuit was probably more than 50 percent.

Was that accurate testimony?

A It was accurate testimony, because I didn't recall that he gave me 200 curators. I thought it was much less than that. I didn't have an exact amount of curators that Judge Porteous gave me. I didn't know how many he gave me.

Q And now that you know, assuming that the documentation is correct that you received more than 40,000 in curator fees, is it still your estimate that more than half of that 10,000 from you and

10,000 from Mr. Amato went back to Judge Porteous?

A The number is the number. If it's \$20,000 and you're telling me I made 40, he got half of it.

Q Your recollection is he got half of it?

A If you tell me I earned \$40,000 in curator fees and Jake and I gave him 20, then he would have gotten half of it. If you tell me I made more than that in curator fees and I gave him 20, I wouldn't have gotten half of it. If you tell me I made 40,000 in curator fees and I gave him more than \$20,000, the percentages would change. I didn't know how many curators I got.

Q Mr. Creely, all I'm asking is, if the records show you got in excess of \$40,000, isn't your Fifth Circuit testimony accurate when you said it was at least half of that money?

A The testimony is what it is. I didn't have a set fee of the amount of money, a percentage to give to Judge Porteous. I don't know how more to explain it to you. The \$40,000 didn't come out of my records; it came out of your records. I don't doubt your records to be accurate, but that number -- you made that calculation. When I said "you," Mr. Schiff, I don't mean you, but you or someone on your staff made that calculation.

Q Mr. Creely, all we can ask for is your best estimate.

A I'm giving you my best estimate. I gave the Fifth --

Q What is the math of your best estimate? Given what the records show, about \$40,000 in curator fees, what is your best estimate?

A If \$40,000 is what I earned on the curators, okay -- and I don't know if that is with or without expenses, if it's after I paid expenses or whatever it is.

Q The records reflect it's after you paid expenses.

A And then I gave him -- our guesstimate is we gave him 20, 50 percent. Half of 40 is 20.

Q Mr. Turley asked you about the money you had given to Mr. Porteous before he started sending you curators. Initially, I think you said that was small amounts of money, \$50, \$100; is that right?

A I didn't keep track of that. Yes, sir, it was small amounts of money.

Q But then at some point, he started asking you for more substantial sums, like \$500; is that right?

A Yes, sir.

Q And that's when you told him it had to stop?

A Yeah, somewhere around when he started asking for that. I told him things had to change. We had to figure something else out, because this can't go on like this.

Q And after that point, he started sending you the curatorship cases, the amounts he asked you for then were more than the \$50 or \$100.

A Okay. I'm sorry. I'm very sorry.

Q After he started to send you the curator cases, the amount he started asking you was more than the \$50 or \$100. Now it was \$1,000 or \$1,500, wasn't it?

A I can't say that's exactly the time frame that that started, but it was around when I started cutting him -- saying I'm not going to give you any more money that the curators started coming. I think maybe when he asked me for 250 or 500, that's when I said this has got to stop, and that's when we had the discussion that I testified to earlier. I don't think I ever complained about \$50 or \$75.

Q So he started sending you the curator cases, and then the amount he starts asking for is very substantial. It's \$1,000 or \$1,500; isn't that

right?

A Over a 10-year period of time, it amounted to \$1,000 a year roughly, each, \$1,000 a year. It may have been several months between requests. I don't know when it was. But it was \$1,000 a year, is roughly what that mathematics comes to.

Q Weren't the amounts, though, that he would ask you for after the curators started showing up in your office more substantial than the pocket money he asked for originally?

A I can't tell you when the more substantial sums came. It probably came before the curators, and then I started complaining and started to avoid him, and then he started sending the curators.

Q And then you started giving him the money again?

A I started giving him the moneys that we're talking about. I don't know with what frequency, but it was roughly -- the math works out to \$1,000 a year, if you want to do the math on it.

Q Let me turn your attention, if I could, to Exhibit 11, page 54. This is, again, the grand jury testimony. You testified: "But the practice became that he -- and it got to the point that he would call my secretary and say Dianne, how many curators

do I have over there? And then she'd come in and it was like a -- it was a bad deal. I mean, it's a bad feeling. Okay. And she would say, she'd say hey, you got four or five curators, and say, he's calling wanting the money on. And I said well, just go get two draws, one for Jake, one for me, and then I would give him the money. Either me or Jake would give him the money."

Do you recall that testimony?

A That's what I testified to.

Q Generally, you gave him the money, but there were times when Mr. Amato also gave him the money?

A Probably so, yeah.

Q And turning to page 103 of the grand jury testimony, you were asked about the spring of 1999. And you responded "I got a call. She came over to get the money," referring to Judge Porteous's secretary. "So apparently he kept calling. And you know, we both like ah, man, you know, try to avoid. I don't know the exact sequence involved. But he said I'm sending Rhonda over. I said what are you? Crazy, man? He said no. I know what you and Jake talk about but I -- he said just -- and we put the money in an envelope. She picked up a sealed

envelope. I have no way of knowing whether she knew what was in that envelope or what or anything. And I said this is absolutely crazy, you know. That's how -- that's the feeling we had as we went along. It was sort of a -- of a desperation on his part, you know, like I need this. I need that, I need the other thing. But to send your secretary."

Do you recall that testimony?

A Yes, sir.

Q Did it shock you that he would send his secretary over to pick up cash from you?

A Yeah. It was my testimony that it was shocking.

Q Mr. Creely, Mr. Turley asked you if you considered this a kickback or a bribe, and you said you didn't consider it to be a bribe or a kickback.

A Consider what?

Q The curator money that he asked for back.

You didn't consider it a bribe, Mr. Creely, if I understand your testimony, because you didn't ask him, you didn't tell him if you'll send me the cases I will send you the money? You didn't have a prearranged deal here; right?

A I didn't have no deal with him on that.

Q Is it your understanding you have to have

a prearranged deal in order to get a kickback?

There has to be some agreement in advance about what percentage you would like to give back?

A I didn't have any cases in front of Judge Porteous, yeah.

Q So if a judge sends you a case, without your asking, and then says I want some of the money back from that case, that's not a kickback, in your view, because he didn't tell you he was going to do that before he sent you the case?

A If Judge Porteous would have told me I'm sending you curators and I want the money back, I would consider that a kickback. But he didn't make that statement to me. Okay? That's all I can tell you. Whether it's a case or whether it's a curator, if he says I'm giving you this but I want so much of it back, I would agree with you, that would be a kickback.

Q So you didn't have that prearranged deal, but instead, he sent you the cases, and then he said he wanted the money back; right? Is that correct?

A That's correct.

Q But that's different because there's no prearrangement in your view?

A There was no prearrangement, correct.

Q Did your firm have a particularly good record of handling curators?

A A good record of handling curators? I didn't have a reputation for handling curators, no, sir.

Q So Mr. Turley was asking you whether you were getting the curators because you were known for your handling of curatorships. As far as you know, that had nothing to do with it?

A I'm very sorry, Mr. Schiff.

Q And Mr. Turley was asking you didn't you have a good reputation for handling curators and that's why you got the curatorships. This had nothing to do with why you got the curatorships, did it?

A No, absolutely not. I don't have a reputation of doing curators.

Q Mr. Turley asked you whether it was common to have lunch with judges, and you said it was common. Was it common to get hit up for cash by judges you were having lunch with?

A Was it common for me to get hit up for cash?

Q Yes.

A No, I've never gotten hit up by cash, if

that's what you mean, paraphrasing. No, it's not common. It never happened before.

Q Was it common to have judges call your office to find out how many curators they had sent over and ask for money back?

A No, sir.

Q That wasn't a common curator practice, then?

A I didn't have a common curator practice other than the curators that Judge Porteous sent me. I didn't have a curator practice. I may have gotten a few curators. Nobody ever called me and asked me for cash. Not one judge ever did that but Judge Porteous.

Q Mr. Turley asked you about it being common to drop off gifts to a judge, hams, turkeys, and you said dropping off hams and turkeys was common; is that right?

A Different things. Some lawyers, at one point in time, wine, cookies, things of that nature, would be delivered at Christmastime to judges, yes.

Q You don't equate a ham or a turkey with \$2,000 in cash in an envelope, do you?

A I'm sorry?

Q You don't equate a ham and a turkey with

\$2,000 in cash in an envelope, do you?

A No. Would I hand somebody a ham or a turkey with \$2,000 attached to it? Are you trying to make like I gave Porteous \$2,000 -- is that unusual? I never did that with another judge. If that's what you want to ask about.

Q I'm sorry. What I'm asking you, Mr. Turley was asking you whether it was common to give a ham or a turkey or some other gift, and you said it was; right?

A It was common, yes.

Q I take it it wasn't common to give an envelope stuffed with cash to a judge?

A Of course not, Mr. Schiff.

Q Now, you mentioned that the practice, some of the lunches, the wining and dining that you described, became somewhat curtailed after the Wrinkled Robe investigation. I don't want to go into great detail at this point about Wrinkled Robe, but can you tell us a little bit about what Wrinkled Robe investigation you're referring to?

A I don't know anything about Wrinkled Robe, it's a real mystery, other than it involved bail bond stuff. It involved a series of issues involving Bail Bonds Unlimited. I am not really

acquainted. It had something to do with a bail bond scheme that was going on over at the courthouse.

Q And this investigation by the Metropolitan Crime Commission received a lot of publicity at the time?

A Yes.

Q And as a result that publicity about some of the relationships at the courthouse, that changed some of the behavior you've described?

A I don't know if it changed the behavior, but -- I'm just saying generally things started tapering off. I believe we had an amendment, if I'm not mistaken, to the Code of Professional Responsibility in the year 2000. I'm not sure about that. And they made some changes as to what you could and couldn't do. And judges, judges became very -- maybe because of the Wrinkled Robe -- suspect to accepting any kind of gift in their office around that period of time. So I think it was more on the judges' part that that came about. But Wrinkled Robe, I don't think it really affected the vast majority of lawyers because most of them didn't do criminal work. Most of them did only civil work, the ones that I knew.

Q You also were asked on cross-examination

about a case where you lost a great deal of money because one of the parties became insolvent; is that right?

A Yeah, something about an insurance company -- the case I had going insolvent?

Q Yes.

A Yeah, I remember that.

Q If they hadn't gone insolvent, you would have gotten the money your client was owed?

A Yes, I believe so.

Q Judge Porteous wasn't responsible for their becoming insolvent, was he?

A Absolutely not.

Q I want to ask you a little bit about the money that you were asked about the Amato & Creely credit card and expenditures on the Las Vegas trip.

Could we put up copies of the exhibit? Can you put them on the screen? Yes. Terrific. I would like these exhibits to be labeled -- this exhibit to be labeled 378.

If you would take a look at the right-hand portion of this exhibit, is that a statement from the corporate card member account of Jacob Amato?

A Okay. I'm looking at "Jacob J. Amato, Jr.," at the top left, "Amato & Creely." That's

what I'm looking at.

Q Can you speak into the microphone?

A I'm sorry?

CHAIRMAN MC CASKILL: Can you speak into the microphone.

THE WITNESS: That's Jacob J. Amato, Jr.

CHAIRMAN MC CASKILL: You need to move the microphone in front of your mouth. There you go. Thank you very much.

THE WITNESS: It says "Jacob J. Amato, Jr.," "Amato & Creely."

BY MR. SCHIFF:

Q If you could expand the top portion of that page. Is this the Amato & Creely credit card you were referring to?

A You know, we've been going around about this for about a year. You're asking me is this the Amato -- this right here?

MR. SCHIFF: Can you scroll down so we can see the top of that exhibit?

THE WITNESS: I don't see "Robert G. Creely." I see "Jacob" --

BY MR. SCHIFF:

Q At the very top, does it say "corporate account number"? Do you see that, Mr. Creely?

A The corporate account number is blocked out.

Q Correct. We blocked out the credit card number. But do you see at the top center where it says "corporate account number"?

A Yes, sir.

Q And do you see where it reads "corporate card member" name "Jacob J. Amato, Jr.,"?

A Yeah. And my name is Robert G. Creely.

Q Does this indicate to you this was the Amato & Creely corporate credit card?

A When we get our statements at the end of the month, if you have ever shared a card with another person -- and I can use the example of my wife. We have a credit card. It is like Robert G. Creely on it. And I get a summary of expenses for Robert G. Creely at the end of the month, which is this big. And I get a summary of expenses from my wife, and it has totals on it, at the end of the month.

Q I don't want to interrupt you, but that's not really my question. My question is, do you recognize this as the corporate credit card that you and Mr. Amato used for business expenses?

A I recognize this as Mr. -- now that we're

looking at this, is Mr. Amato's -- "previous balance," see how it is, "Jacob J. Amato, Jr.," it's got an amount, and "Robert G. Creely" has an amount. And it would have under my name, for whatever those amounts total are, those would be my charges or carryover charges from the previous month. It says "previous balance."

Q This was the credit card, Mr. Creely, you used during the Las Vegas trip; correct?

A It would have my name on it. If it was my charge, it should have my name on the top left corner. It would have my name if it was my charges.

Q I understand, Mr. Creely, but Mr. Amato was not on the trip with you; correct?

A No, he was not on the trip. His son was.

Q And you paid for the expenditures on this credit card statement, didn't you?

A What?

Q Mr. Creely, do you recognize the expenditures on this statement? Do you recognize the top item, see Caesar's hotel and casino, Las Vegas, lodging/charges, \$86.11, a second night in the same amount, a fourth item, the Golden Steer, STE, Las Vegas, amount of \$560? Do you recognize those charges?

A Yeah. I would have paid my brother-in-law's -- ex-brother-in-law's room. I told you this in my deposition. On many numerous past occasions, my brother-in-law came with us because he was friends with Michael Porteous. His credit card didn't work. The way I recollect it, checking into the hotel -- and it's been years of confusion with Mr. Dubester. I was checking into the hotel, and I remember getting in last, because his credit card didn't work and he was embarrassed. So he asked me if I would pay for his room, and I did. I offered my credit card to pay for my brother-in-law's room. So that would explain my room and my brother-in-law's room, is all I can tell you.

Q And do you recognize the charges for the Golden Steer of \$560? Would that have been the money that you paid for the -- your share of the meal during this trip?

A That looks like the meal, yeah, 560. It would have been the next night. This was the 72-hour trip.

Q So that would have been the amount that you paid though; right?

A Yes, sir.

Q Does that indicate to you that this was a credit card you were using?

A It would have been a credit card I'm using.

Q And down below, it indicates a charge of \$378.70, again for the same room as above. Would those have been the charges to Mr. Porteous's room?

A It says Caesar's hotel and casino, Las Vegas, lodging/charges. It says lodging/charges, and then Caesar's hotel and casinos. Hotel and --

Q Do you recognize item 37 as the additional charges to the room by Judge Porteous that you paid for?

A The thing -- it went away.

MR. SCHIFF: Can you try to pull it up? Let's pull up, if we could, the second page under "guest pay."

THE WITNESS: Can you go back to that first page that you just flipped off, if you don't mind?

BY MR. SCHIFF:

Q Certainly.

A This has been my confusion for the last year, and that's why we've been -- I'm just trying

to -- it says -- if you read under "summary of account," it says -- I can't really read it that well. It says something "card, Jacob J. Amato, Jr."

Q Mr. Creely, I don't want to spend too much time --

A Corporate card member name, Jacob J. Amato, Jr.

MR. TURLEY: The witness is trying to explain his testimony. This is the same issue the House raised during our testimony. I think the witness should be able to explain his testimony.

MR. SCHIFF: And I want him to explain it, but I think it would help to clarify by putting another exhibit related to this charge before the witness.

Could you pull up the document --

CHAIRMAN MC CASKILL: Let me just say, I think the testimony has been fairly clear, Mr. Creely, that he paid for a bunch of stuff in Las Vegas, including Judge Porteous's room, and he paid for it with his law firm's credit card.

Is that correct?

THE WITNESS: I'm being told I paid for his room. I'm being told this reflects my payment of his room charge.

CHAIRMAN MC CASKILL: Okay.

THE WITNESS: That's what I'm being told. I don't doubt that I paid for his room. Judge Porteous has testified that I paid for his room. I don't recall paying for his room. I recall paying for my room and my ex-brother-in-law's room, ma'am. That's what I recall.

CHAIRMAN MC CASKILL: With the law firm's credit card?

THE WITNESS: With the law firm's credit card, but it would have been Robert G. Creely's card.

CHAIRMAN MC CASKILL: I think if the witness wants to take a few more minutes to try to explain or not explain, I think the -- I want to urge the parties, both parties, to not dwell when the testimony -- there's been at least five or six times that these witnesses have said the same thing at least four or five times a piece. I just want to make sure that we all realize that this is -- what I don't want to have happen is we get to the end of the 20 hours and we hear protestations that you haven't had time to get evidence in front of the committee, because I've heard Mr. Creely repeat the same evidence three or four times in the hour and a

half he's been on the stand.

MR. TURLEY: Madam Chairman, if we could be heard on our objection, the witness has asked to see the first page of this exhibit.

CHAIRMAN MC CASKILL: What's the basis of your objection?

MR. TURLEY: That they just cut off a witness when they were trying to explain what this exhibit is. He hasn't been able to explain.

CHAIRMAN MC CASKILL: If you want to take a few minutes to try and explain, that's fine, Mr. Creely. Go ahead.

THE WITNESS: I don't have to explain.

CHAIRMAN MC CASKILL: Okay. Move on.

MR. SCHIFF: Thank you, Madam Chair. I won't delay it any further. I was only seeking to establish the amount of the payments, not the fact that he was using the corporate credit card, but I will move on.

BY MR. SCHIFF:

Q Mr. Creely, you mentioned that on other occasions your firm stood to make or made other large recoveries in other litigation.

Nonetheless, wasn't the Liljeberg case a very important case for your firm?

A It wasn't important to me, but it was an important case, of course.

Q It wasn't important to you that you might earn half a million dollars?

A Yeah, it was important to me to make a half a million dollars, but I didn't anticipate making that money for a long, long time. Whatever amount of money you keep telling me, half a million, I have no idea what that contract cost was. We had 6 percent or 4 percent, whatever. It was all, from what I remember just talking to Mr. Amato, it was the pharmacy issue, there was the hospital foreclosure issue.

Q Mr. Creely, because I have limited time --

A You're telling me would I like to make half a million dollars. Yes.

Q This was basically 50 percent of your partnership, your partner working for two years almost solely on that case, wasn't it?

A If we win the case on appeal, if we're still partners at the time, you name it. If this thing went through appeal, which normally, you know, two years in the U.S. 5th Circuit Court of Appeals, a year and a half is not an abnormally long period of time.

Q We will get through a lot quicker if you respond to my questions. My question is, wasn't this, your partner spending two years of his time, wasn't that a significant investment of time for the firm?

A Yes, sir.

Q And for a two-person firm, wasn't it a significant amount of money for you to make or not make?

A Would that have been a significant amount of money?

Q Yes, sir. To your firm. Not to somebody else's firm but to your firm.

A Yes, sir.

Q Mr. Turley referred or characterized the \$2,000 in the envelope as a wedding gift. Have you ever called it a wedding gift?

A Did I?

Q Yes.

A No.

Q Do you consider \$2,000 in cash solicited by a judge to be a wedding present?

A It wasn't a wedding present. I thought it was tuition originally. Now we evolved toward a wedding present, and now I know it's a wedding

present, and now I know that it's to pay for a limousine.

Q I'm not suggesting --

MR. TURLEY: Same objection for cutting off the witness. This is the same objection the House made to our questioning.

BY MR. SCHIFF:

Q Mr. Creely, I'm not suggesting that it was a wedding present. Those were Mr. Turley's words.

I'm saying that the cash that Judge Porteous solicited and you and your partner gave him, you didn't think this was like an item they registered for at a department store, did you?

A I'm very sorry. Would you ask -- I'm very sorry. Would you come back with it one more time?

Q You didn't feel the money you were giving him, the cash in the envelope that the secretary came to pick up, you didn't equate that with getting a piece of China for the groom, did you?

A No. A piece of China for the room?

Q For the groom.

A You mean like his son getting a piece of China?

Q Yes.

A I equated it with what my law partner told

me it was at the time. I thought it was tuition. I later found out it was, I think, to pay for a limousine service. It wouldn't have been for China. It would have been for what he told me. It could have been for anything. He told me -- originally, I thought it was tuition. Through reading all of this, I found out it was for transportation. If you're telling me it was a piece of China, I can't argue with you.

Q I'm not suggesting it was a piece of China, Mr. Creely.

Let me ask you about the draws that you took to pay the judge the curator money. Why didn't you have the firm write him a check? Why did you pay him cash?

A It was a -- it's what we talked about before. We paid him in cash. Cash, if I denied cash, it's bad. I would have lied. I would have committed perjury. If I had written him a check 25 years ago, I would never have been able to locate the check, and we would have been back to the same thing, did you give him more checks or did you give him less checks.

I don't know what to tell you, but the cash is not traceable, and I'm admitting to the

cash. If it was 2,000, if it was 1,500, it wasn't right. I did it. Now, I'm admitting to it. So if I gave him a check 25, 30 years ago, I could never have found that check, and you would have been beating on me, saying where's the checks, and I would be saying I don't know where the checks are.

Q When Mr. Turley asked you whether you ever tried to hide it, the fact is part of the reason you gave him cash is it didn't leave a paper trail; is that right?

A It did not leave a paper trail, and if I had given him a check, it wouldn't have left a paper trail. If I had written a check for cash or something like that -- I can surmise a million things. The fact that I'm admitting to it, I'm admitting to it. I don't want to be here. I didn't want any of this to happen. I would have been glad to be able to not testify and take the Fifth Amendment, but because of this piece of paper, I've got to come in here and tell you the truth. I'm telling you the truth. I stopped practicing law because of this. I'm not here lying to you.

Q Mr. Creely, if your firm had written him a check for the curator fees, wouldn't that leave a paper trail?

A If I wrote him a check?

Q If the firm had written him a check for the curator fees, wouldn't that leave a paper trail?

A Probably would have, but --

Q Isn't that part of the reason you didn't do that?

A He didn't want checks. He wanted cash. But what I'm saying is, I've admitted I gave him cash. What are you -- if I didn't admit to giving him cash and you found out I gave him cash, then I'm doing something terrible. I'm admitting to it.

MR. SCHIFF: Madam Chair, no further questions.

MR. TURLEY: Recross?

CHAIRMAN MC CASKILL: Okay.

SENATOR WHITEHOUSE: Madam Chair, I'd like to suggest the notion that we -- at some point perhaps reconsider whether or not recross is helpful. I, for one, found the last recross to be unilluminating in any respect. But if you allow recross and you make a pattern of it then there's going to be a lot of recross. Then both sides get it, and no lawyer who has an opportunity for recross wants to turn down that opportunity, and on we go. I just think that there perhaps should come a time

where we consider as this body whether to allow recross, and I don't want to prejudice the House by having Mr. Porteous do this, but I'm concerned about the issue of whether recross is a good idea.

CHAIRMAN MC CASKILL: Senator Hatch?

VICE-CHAIRMAN HATCH: I want to caution both sides to understand that you have a limited amount of time, and some of this, I think we got the picture, before and again. My personal belief is that you better shepherd your time. And I hope that neither side has to take the full time. I hope we can get through this. We have a wide range here and certainly every opportunity to present the case.

SENATOR RISCH: Madam Chairman, over here briefly.

CHAIRMAN MC CASKILL: Yes.

SENATOR RISCH: Recross is not a right. It's a discretionary for trial authority. I think with the limited time we have, I think both parties ought to be cautioned and directed that on their direct testimony and cross-examination, they need to get everything out and move on. We're not going to get through this. This stuff is pretty straightforward. We haven't hit anything yet that's rocket science that I've seen.

I'm with Senator Whitehouse. I think we've heard what we need to hear.

CHAIRMAN MC CASKILL: I think now both parties have heard the sentiment, which I think is fairly widely held by the panel, that we need to be cautious about retreading ground that's already covered. So I think what -- and I will be in consultation with the members of the committee overnight, but I'm going to go ahead and give you, Mr. Turley, a recross right now with the warning that if this recross is going over old territory, then it may be the last recross we have. In fairness, maybe we will give you one or two for their first witnesses so we will try to do this fairly on both sides. All of us are just trying to be fair to both sides. I know what it's like when you're in your case and you feel like you have to make the same point over and over and over again. But you're dealing with folks that, I think, get it the first or second time. So I would just caution you -- yes?

SENATOR KAUFMAN: We have a schedule here of how much time we're supposed to spend on each witness. Suppose we gave them a certain amount of time to use for each witness and they could decide

whether they wanted to save time for recross or not?

CHAIRMAN MC CASKILL: I'm reluctant to micromanage their cases in that regard. I think they're very aware. I'm going to try to give them their time at every break. They are very aware of what they have left in terms in their witness list, and what they have left in terms of cross and redirect and if you get to the end and you don't have time to put on a witness, then you're not going to be able to put on that witness. If you get to the end and you're not going to be able to cross-examine at all, you're not going to be able to cross-examine at all.

So I think with those warnings, Mr. Turley, go ahead with your recross. The plan right now, evidently there's a number of my minority committee members that have a meeting that you feel like you have to go to at 6:00; is that correct?

SENATOR RISCH: That's correct, Madam Chair.

CHAIRMAN MC CASKILL: We will go until probably 10 minutes after they call the vote and we will reconvene at a time when I hope we can get seven members. Keep in mind, if it's between the hours of 8:00 and 6:30 at a minimum for tomorrow and

Wednesday and Thursday, with the exception of the breaks that we have in the schedule, if we don't have seven members, we can't proceed, and that is a terrible inconvenience to all the lawyers, to the parties, and to the witnesses that have been called to come on various days that are traveling long distances. So everyone, try to work your schedules. I understand what an inconvenience this is and how difficult it is for Senators to block this much time when we're used to running from one place to the other all day long. But it's going to be really important that we get the cooperation of this committee, or we really will be here until past the time the Senate adjourns for the next work period, and that's in four weeks.

Senator Hatch?

VICE CHAIRMAN HATCH: Madam Chair, I want to be as broad as I can. This is a very serious issue involving a federal judge. Both sides ought to have whatever time they want to take to present their case. On the other hand, again, I caution counsel, you're going to run out of time, and I would hope that you can get your witnesses up and on without using all your time. But I'm very loathe to interfere with the way they want to try their

respective parts of this case, and this is not a trial in the sense of a court trial.

We're building a record for the trial before the Senate. It's important for both counsel to be able to put their best case in, and however they decide to do that is fine with me, but I caution them that we've spent an awful lot of time going over some things that I'm not sure add that much to the case one way or the other.

CHAIRMAN MC CASKILL: A vote was just called. We're going to go for 10 minutes, and then we will adjourn until 6:00.

MR. TURLEY: Our time starts now on recross?

CHAIRMAN MC CASKILL: Right now, and we will go for 10 minutes and adjourn so everybody has enough time to make the vote, and we will come back at 6:00.

MR. TURLEY: I seriously doubt I will even go that long.

RE CROSS-EXAMINATION

BY MR. TURLEY:

Q Mr. Creely, I just want to show you something from House Exhibit 445, which is your deposition, and I'm just going to put it up on the

screen for you.

This is page 47 for opposing counsel.

And I'm going to read it to you. It's very short, but it should pop up, and I'm going to start to read it, and you can look at it if you would like.

"Question: Did you at any time see a link between the curatorships and the gifts that you gave to Judge Porteous?

"Answer: Did I see a link?

"Question: Yes.

"Answer: There was never a link in my mind giving him money for curators."

Do you see that, sir?

A Yes, sir.

Q Is that still your testimony?

A I see it, yeah.

Q Is that still your testimony, sir?

A It's my testimony.

MR. TURLEY: Thank you. That's all of our questions.

CHAIRMAN MC CASKILL: Next witness,
Mr. Schiff?

Sorry. I forgot if the panel members have questions.

EXAMINATION

BY SENATOR KLOBUCHAR:

Q I had a question. You kept saying that the curatorships, that you didn't want them. Why didn't you just turn them down?

A Ma'am, I'm sorry?

Q Why didn't you just turn down the curatorships?

A I could -- I wish I would have.

Q You could have?

A I could have turned the curators down. I did not.

Q You kept saying you wanted to turn them down, and it was in your power to turn them down?

A It was within my power to turn them down. Yes, ma'am.

Q My second question was, you said you were surprised when the judge's secretary brought the money over and that made you upset or when the judge's secretary came to pick up the money from you; is that right?

A I'm having a real hard time understanding you.

Q Okay. You said that when you sent the money over to the judge, the judge's secretary

picked it up sometimes; is that right?

A I didn't say that I sent it over. What I believe the testimony will reflect is that she came over to get the money from my office. She came to my office to get the money. To our office to get the money.

Q Right. And you said that upset you that she did that and you were shocked by that?

A Yeah.

Q If you were just giving money to a friend, why would that shock you?

A Because he was so pushy. You don't know the aggravation in giving away money. I got to a point where I didn't want to give money away anymore, and it was extremely aggravating for me to have to give that \$1,000 to my law partner.

Q Why would involving the secretary make it more troublesome except for the fact you must have realized that she knew about it then?

A Kind of like a debt collector. I don't know how to explain it to you. Somebody that comes at you -- if you -- he knew I was avoiding him. He knew I was avoiding him. Everybody knew we were avoiding him. He sends his secretary over there.

Q And then did he call your secretary once

and talk to her?

A Yes, ma'am.

Q You said that upset you, too, for the same reason?

A Yeah, because he was making a connexity between curators and payments. That was the, that was the focus --

Q Were you also concerned that he had said it to her, to your secretary?

A That he suggested there was a connexity, yes, I was concerned about that, yes, ma'am.

Q Why were you concerned about that? Because somebody else knew about it?

A Because there was no connexity between the money I gave him and the curators we were sent.

Q It seems in both cases you have his secretary and your secretary finding out about something and that in both instances you are upset about that. And I just found that interesting because of the fact that now two more people knew about it. That's all.

A That's it?

SENATOR KLOBUCHAR: All right. Thank you.

CHAIRMAN MC CASKILL: Senator Wicker?

SENATOR WICKER: Yes.

EXAMINATION

BY SENATOR WICKER:

Q You testified before the grand jury under an immunity agreement; is that correct?

A Yes, sir.

Q Did you first assert your rights to remain silent under the Fifth Amendment?

A No, sir, and Mr. Capitelli, who is my lawyer, I'm very grateful for him, I've never asked for any kind of immunity. They gave me this immunity. I don't do criminal work. It's called forced immunity.

The way I understand it, if I'm called before the grand jury and I say I'm not answering your questions and take the Fifth Amendment, assume that to be the case, and then the -- whoever, the prosecutor hands you a forced immunity document, if you don't testify, they put you in jail. They hold you in contempt of court and haul you off to the jail.

So going into the grand jury room forced immunity, the way I understand it, and I don't want to misstate what it is, because I'm not going to totally understand it, forced immunity.

In other words, you don't testify, you go to jail, is the way I -- that's the basic way I understood the document. And I didn't take the Fifth Amendment. I didn't plead the Fifth Amendment. I didn't refuse to testify. I was ready to cooperate fully. They gave me forced immunity, forced immunity.

Q So this immunity agreement was not something that your attorney negotiated with the federal attorney?

A Not that I'm aware of. The forced immunity -- I was never charged with anything. I was never accused of anything. So people who bargain for immunity are bargaining for some kind of a deal, is the best I understand it. It was forced.

SENATOR WICKER: I think that answers my question, Madam Chair.

THE WITNESS: Sorry?

SENATOR WICKER: That answers my question. Thank you.

CHAIRMAN MC CASKILL: Senator Whitehouse?

EXAMINATION

BY SENATOR WHITEHOUSE:

Q Mr. Creely, I want to understand a transition. There was a stage described in your

testimony in which Judge Porteous was asking you for money. He was asking you for \$50, for \$100, and you were essentially just handing him the money; right? Is that correct?

A Yes, sir.

Q Then there was a later stage where he was asking you for larger amounts of money, and now instead of just handing him the money, you were going back and working with your partner, Mr. Amato.

A Right.

Q And you were paying him through the firm account, and you were having your secretaries run down and cash the checks and bring the cash back to you. And it went from being a private expenditure of yours to being a firm obligation or a firm payment.

Can you clarify for us what it was that made this transition happen between this being a Mr. Creely, here's my friend, giving him \$50 or \$100, to the firm being involved and using the firm accounts and establishing the 50/50 split between you and Mr. Amato? There's a difference there. What caused that difference to happen?

A And the difference being is that I -- Amato and Judge Porteous were probably closer than

Judge Porteous and me. So the difference is that I was getting tired of being leaned on and said I need some help, you know, you need to help out. And so we took -- we got taxed for the money we took. I said he's your friend, too, he's not just my friend. So we both made an equal draw to give him the money. I'm not going back over the amounts and the math, but that's what happened when it happened.

SENATOR WHITEHOUSE: Okay.

CHAIRMAN MC CASKILL: We are going to adjourn so all the members can go vote. We are going to leave at 6:00. You're not excused yet, Mr. Creely, because all of the Senators have not had an opportunity to ask their questions. So you will have to remain. We will finish up with the panel's questions when we get back. So remain, and we will come back at 6:00. It shouldn't be much longer for you, and then we will call your next witness.

(Recess.)

(6:00 p.m.)

CHAIRMAN MC CASKILL: The hearing will reconvene and Congressman Schiff, you may call your next witness. Let me say for the record the House now has 16 hours and 14 minutes and Judge Porteous has 16 hours and 48 minutes.

MR. SCHIFF: Madam Chair, the House calls Joseph Mole.

CHAIRMAN MC CASKILL: Let me also say on the record, as Mr. Mole comes to the stand, that we have released Mr. Creely, because there were no additional questions of him from the Senators on the panel.

Has someone gone to get the witness?

Mr. Mole, would you remain standing, please, and raise your right hand.
Whereupon,

JOSEPH N. MOLE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Mole, could you state your full name for the record, please.

A Joseph Nicholas Mole.

Q And what is your -- what is your profession?

A I'm an attorney, practicing law in New Orleans, Louisiana.

Q How long have you been practicing law?

A Since 1977, so 33 years.

Q What is the nature of your practice?

A I've done primarily commercial litigation for all those years, almost entirely commercial litigation, some employment law.

Q Are you familiar with a case titled Lifemark versus Liljeberg?

A Yes, I am.

Q Can you tell us a little bit about your involvement in that case and the timeframe it took place?

A I represented Lifemark in that case between 1996 and the end of the case in 2002. Lifemark had been engaged in that litigation, it was actually three consolidated lawsuits, in federal court in the Eastern District of Louisiana. Litigation was about 10 years old when it came to me.

Lifemark was looking for new lawyers, they hired me in, I believe, April of '96. We did some pretrial work and took the case to trial in the summer of 1997 and then handled the appeal.

Q Why was Lifemark looking for new attorneys at that time?

A The lawyers that had been representing them had some problems with possible malpractice in

the case and had to be disqualified on a conflict of interest because of that. And so Lifemark sought new counsel.

Q Did your litigation experience include complex business litigation?

A It did. The case involved antitrust, bankruptcy and just commercial contract, a lease. So we had to -- that was all within my experience.

Q I know this is difficult to do, but Mr. Mole, can you give us just a very brief nutshell on what this case was about?

A It's a very -- it is difficult in a nutshell, but the Liljeberg family had built the hospital that was at issue, it was known as the Kenner Regional Medical Center at the time that I took over the case.

They had been financed by Lifemark. Lifemark lent them the money and then agreed to operate the hospital, because the Liljebergs were not -- had no experience in operating hospitals.

Then over the years, that relationship went bad, the Liljebergs also as part of the deal operated the pharmacy in the hospital on the contract. It was a very lucrative contract. It paid them a lot of money.

When the litigation went to trial, there were three main issues. One was the Liljebergs had lost their hospital in a foreclosure sale with another lender. They blamed my client, Lifemark, for that, and was suing for the damages consisting of the loss of their hospital.

Lifemark was suing the Liljeberg family to try to get out of the pharmacy contract. It was a very difficult relationship, very difficult to have a pharmacy being operated by a hostile company within the hospital.

And then the Liljebergs had sued Lifemark, claiming that they were owed, if I recall, over \$20 million on pharmacy payments that they had been cheated on by Lifemark. So all of those things were going on at the same time.

Q And again what -- approximately when did you enter the case?

A I believe it was April of 1996. At that time, the case was scheduled for trial in November of that year, so I had a very short time to get up to speed on a very difficult and already old litigation.

Q And it was -- that was half a year, that was a short time because of the complexity of the

case?

A Extremely, yeah. And it was also a parallel case in bankruptcy court, because the Liljebergs, at least one or two of their entities had filed Chapter 11s, and we had to deal with that as well at the same time.

Q Who was the judge in the case?

A Judge Porteous was the trial judge in the Eastern District of Louisiana.

Q And was this to be a bench trial or a jury trial?

A It was a bench trial, because of the bankruptcy jurisdiction primarily.

Q Mr. Mole, can you pull the microphone a little closer so we can hear you more clearly?

A Sure. I'll move up a little bit. Is that better?

Q When you came into the case six months before the trial date, had the firm of Amato & Creely entered an appearance yet?

A No, they had not.

Q Had Mr. Levenson entered an appearance at that time?

A No, he had not.

Q Did there come a time when the firm of

Amato & Creely and Leonard Levenson entered appearances in the case?

A In September, when trial was about six weeks away, I found out that they had signed up as counsel, they had made a motion to enroll. And I went and looked at the bankruptcy record, because they -- because of the bankruptcy the Liljebergs were in, they had to make a motion for leave to be approved by the bankruptcy court. And they were coming in the case at the last minute on a contingency fee.

Q What was the contingency fee?

A They were going to get 11 percent of the value of the hospital claim, which, as I recall at that time their expert valued at \$200 million.

Q Did you have any concerns when Amato & Creely and Mr. Levenson entered their appearances for Liljeberg six weeks before trial?

A I did.

Q What were your concerns?

A I asked around my firm, I had no experience with Judge Porteous. He and I went to the same high school, and that's about all I knew of him. I knew that he had been a Jefferson Parish state court judge.

So I asked around and got some negative reactions. So I did some due diligence. I called people on the phone who I thought would know more, and developed some serious concerns that Mr. Amato and Mr. Levenson's presence in the case would be a problem that would keep the case from having a fair result.

Q Now, did the folks you spoke to, were they willing to be public about their concerns about the relationship between Mr. Amato, Mr. Levenson and the judge?

A No, they were not. Some people didn't want to talk. Some people would make sure that whatever they told me was something they would not want known.

But the word that I got basically was that the case was likely to be fixed.

Q Did this pose a particular concern, given that it was a bench trial rather than a jury trial?

A Yes, it did, because the judge would be making all the decisions of fact and law. And, you know, as it turned out, Judge Porteous is an intelligent man, and he could -- he could do us a lot of harm. My client didn't want to lose their hospital and they also wanted to get out of the

difficult relationship they had with the Liljeberg family.

Q And in discussing this with your client, what did you decide to do as a result of the concerns about this relationship that Mr. Levenson and Mr. Amato had with the judge?

A Well, the first thing we did after thinking about it was file a motion to recuse him, filed a motion based upon just what I've told you, to Judge Porteous, and said that I thought that the -- the entry of two of his closest friends into the case at that late time when the Liljebergs already had at least four law firms involved on their side who knew the case very well would create an appearance of impropriety, so I asked him to step down.

Q Were you concerned in making this motion that you were making basically a motion for a judge to remove himself to the very judge that might hear the case if he turned it down?

A Yes. I think it was probably the most careful draftsmanship that I ever did was to write the motion to recuse so that I wouldn't unduly offend the judge, because the likelihood of winning a motion to recuse is always very small.

Q What did you base your motion for recusal on given the limited information or at least the desire of those who shared it with you not to be disclosed? What did you base it on?

A Like I said, usually when you file a motion to recuse -- and it's the only one I've ever done -- you file an affidavit with some evidence. I had none. So I filed my own affidavit, basically as I understood things on hearsay that there was a close relationship between Judge Porteous and Mr. Amato and Mr. Levenson, that they were known to socialize together, that Mr. Amato and the judge had been law partners and that the timing created suspicion that it was the best thing for the judge to do, to avoid the appearance of impropriety, to step aside.

Q Were you aware at the time you filed the recusal motion that Judge Porteous, while a state judge, had assigned \$40,000 worth of curator cases to the firm of Amato & Creely?

A No, that's certainly something I would have brought up in the evidence that I submitted to the judge.

Q Were you aware that the attorneys Amato & Creely were giving him back a substantial portion of

those curator fees?

A No, I only became aware of that in the years later.

Q Did you know that Amato & Creely had given him cash of any kind?

A No, I wasn't aware of that. I had nothing like that at my disposal when I filed the motion to recuse. I learned those facts only in connection with the 5th Circuit's judicial inquiry and the grand jury investigation and then with the House of Representatives hearings.

Q The committee has already heard testimony about the recusal hearing, I won't go through all of it with you. In the transcript there's no indication that he disclosed getting the money from Mr. Amato. Was there a time off the record where he disclosed to you or any of the Lifemark counsel that he had received cash from Mr. Amato?

A Certainly not, no, never did.

Q Did Mr. Amato ever reveal that to you?

A No, he did not. All I have as I sit here today is the hearsay that I've been told that.

Q Do you remember during the hearing being chided by the judge for not doing your homework better?

A Yes, I do. One of the allegations I made in my affidavit was that the judge had received campaign contributions from Mr. Amato and Mr. Levenson. I had the campaign records that are publicly available in Louisiana, and the judge basically said that, well, you didn't really understand things because the money that he got was minimal in amount, and that was true, and that it was the result of a fundraiser for a number of judges, so it wasn't even personal entirely to him.

Q In light of the fact that he had received cash from Mr. Amato, did you find that representation in the recusal hearing to be misleading?

A Certainly. You know, it was my expectation on my understanding of the law that when a judge receives a motion to recuse, it's incumbent upon him to disclose what he knows that would affect the outcome of the motion and the feeling of the parties as to whether or not he was going to be impartial. And I was hoping he would disclose just that sort of thing.

Q Let me direct your attention to page 3 of the transcript of the recusal hearing.

A Is this what I'm supposed to look at here?

Q And specifically to the section where Judge Porteous says, "this is the motion filed with respect to all of the particular cases to recuse. Let me dictate one thing into the record before everybody commences."

He goes on to say, "a party who believes a judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter but an independent responsibility as an officer of the court."

"Judges are not omniscient, and despite safeguards, overlook a conflict of interest. A lawyer who reasonably believes that the judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest."

"Any other course would risk undermining public confidence in our judiciary system. I cite that so that everyone understands that I recognize my duty and obligations."

Do you recall him saying that?

A Yes, that's a very good statement of how the system is supposed to work.

Q Did Judge Porteous deny your motion to recuse?

A He did.

Q Did you appeal it?

A We went to the 5th Circuit, yes, on a writ of mandamus and asked the 5th Circuit to reverse the denial.

Q Is there any question in your mind that Judge Porteous should have disclosed the financial relationship with Amato & Creely?

A No doubt in my mind, no.

Q Is there any question in your mind that had you been able to present those facts to the Court of Appeals, the Court of Appeals would have reversed his recusal decision?

A I think they would have, yes.

Q At trial did you bring an additional counsel?

A I did. I hired a gentleman named Don Gardner because he was Judge Porteous's close friend.

Q And I take it this was after the recusal motion was denied?

A After the recusal motion, you know, I predicted to my client that it wouldn't work, or there was a low likelihood that it would work. My client said, well, then we need to level the playing field and you need to hire someone who knows the

judge.

And I undertook to find out who that might be and ended up with a man named Don Gardner, whom we paid to help us with the case.

Q And how did you feel about having to bring in a friend of your own -- or a friend of Judge Porteous for your own side of the case?

A Well, I didn't want to do that. My client insisted. And I preferred to do what I ended up doing anyway, which is just make a good record and take an appeal and try to win through the system. But we did it because my client wanted to.

Q Is it fair to say that judge -- that Mr. Gardner was brought in solely because he was a friend of the judge?

A Yes.

Q Did he question any of the witnesses during the trial?

A Not that I recall. He didn't speak during the trial.

Q Did he argue any of the motions?

A No. He was there every day for every minute of the trial, but took no part.

Q What was Mr. Gardner's fee arrangement?

A We gave him \$100,000 retainer, and then

there were other payments -- we had a retainer letter where Mr. Gardner would get payments contingent on the outcome. The one that stands -- the one that stands out into my mind is that if his entry into the case caused Judge Porteous to recuse him, there would be another payment, because it was my -- I felt like getting the judge to recuse himself would be the only way to get a fair outcome.

Q Why did you think his addition to the case might result in a recusal by the judge?

A I thought that having close friends on both sides of the case might induce the judge to get out, and I thought that would do it possibly.

Q And what was the fee arrangement if Judge Porteous left the case, either took himself out or left the case for some other reason?

A I believe there would be another payment of \$100,000 and Mr. Gardner would have no further connection with the case. That would be the end of it.

Q So if Judge Porteous left the case, so would Mr. Gardner?

A That was the way the agreement was, yes.

Q Was there any reason to have Mr. Gardner still in the case if Judge Porteous left the case?

A Not in my mind.

Q Were there other contingencies as well in terms of the recovery where Mr. Gardner could get more money?

A Yes, there were. There were more increments of money to be paid if the -- as the result got closer to a zero and my client got out of the relationship entirely with the Liljebergs.

Q And why did you structure the fee arrangement that way?

A Well, it was a big case. You know, there's a lot at stake. I wanted Mr. Gardner to be involved, my client did, and I wanted him to stay on our side, and I wanted him to have an interest in there being success in the case. And I thought that was the way to do it.

At the time also, it was a concept amongst defense lawyers to try to offer their clients graduated fees based on outcome, and it was a way to do that. So that's why we did it.

Q And why did you want him to have an interest in the success of your side of the case?

A You know, I didn't know any of these people very well, and I wanted to make sure Don Gardner was on our side. And I just thought him

having an interest in the case being successful was important to us.

Q Did you have a concern that Mr. Gardner might do some form of double-dealing with the other side?

A You know, it was a concern at the time. I got to know Don pretty well through the trial, and I don't think that fear was well-founded at the end of things. But that was part of my thinking at the beginning when I retained him.

Q And Mr. Gardner, did he tell you that he didn't feel he would influence the judge's decision?

A Don from the very first said, look, you can pay me what you want or what we agree to, but I'm not going to be able to change any outcome, I'm not going to be able to influence the judge. But I can help you understand the way he thinks. I can tell you what I know about him as a person that might help you in the way you present your evidence in the case. And he said I can sit at counsel table, smile and look pretty, but there's not much else I can do.

So he was always very frank about that.

Q And it was nonetheless worth 100,000 initial payment and another 100,000 if he left the

case to both you and your client that your side have a friend of the judge sitting at your table?

A Yes, it was.

Q Do you recall when the trial began?

A In, I believe, mid-June of '97. I know the last day was July 31 of '97. It was spread out over six weeks, but it was only 16 of those days in trial.

Q And during the trial, did Judge Porteous get involved in the questioning of the witnesses?

A Yes. In three or four of my witnesses, typically a strong witness or an expert who had done a good job for me, I thought, on direct, the judge after the Liljeberg lawyers would question them, in my opinion never laid a glove on them, Judge Porteous would question the witnesses and, like any advocate, I didn't like that. And I thought the judge went too far in the way of cross-examining and pushing on my witnesses and changing the net result of their testimony to not so favorable.

And he did that on -- the last witness he did it to, I raised my hand when he finished and said, Judge, I'd like to follow up. And he denied that. And I said with all due respect, I'd like to object to your questioning in a way that I think was

too much like cross-examination.

And he became very angry at me.

Q What did he do?

A There were some bench books, big black binders full of papers, exhibits, in the days when we used paper a lot. And he began throwing a couple of them toward me. I was at a podium like this standing up, and he was throwing them like a soccer ball. There was no realistic chance he would hit me, but it's not something that had happened to me before in court.

Q After he threw the briefing books, what happened then?

A He stormed out, went back into chambers. And a few minutes later -- it was the end of the day, Thursday. We knew Friday would be an off day. And his clerk or one of his staff came out shortly thereafter and told us to come back on Monday and the judge would resume the trial at that time. And that's what he did.

Q What took place on Monday?

A On Monday he came back in, well prepared to address my objection. I believe he had a bench memo, and he read into the record his ruling denying my objection to questioning the witnesses, but then

gave me a chance to question -- to follow up, to ask some more questions of my witness, which I did. And then we moved on.

Q Did you consider Judge Porteous to be a smart trial judge?

A I think Judge Porteous is a very intelligent man, yes, and a very good trial judge. He has a charismatic personality, able to command the courtroom. He knew his Rules of Evidence very well, could make decisive rulings. Trial lawyers don't like a judge that's indecisive or dithers about an evidentiary ruling. And I think he has good command of the courtroom, yes.

Q Was he a good enough, smart enough judge to know how to prepare a record for appeal?

A He certainly had been doing it a long time, yes. I think so. That was one of our fears, is if he was going to write an opinion that was slanted, he knew how to do it.

Q Was it your sense that he knew how to conduct the trial so as to give himself as good a record as possible on appeal?

A You know, he certainly knew what he was doing in a courtroom. My feeling at trial was that he didn't really slant the evidence so much as

listen to it and react to it.

Q And did you feel you were going to win or lose the case?

A I always felt that we had an uphill battle and we were probably going to lose. You know, in doing a trial, it takes a lot out of you. It's very hard. It's very draining. And you have to do it some motion and involvement.

So no matter how bad your case, you fight. We certainly did the best we could and never gave up hope that we would win and hoped for the best.

But I realistically thought that because of the friendship thing with Mr. Amato and Mr. Creely and Mr. Levenson, that we didn't have much of a shot.

Q Did you feel on the merits that you had the better case?

A Absolutely. I thought we had better witnesses, a better case. I thought we did a better job of preparing and presenting the case.

Q Was there any reason other than the relationship between Mr. Amato, Mr. Levenson and the judge that you felt, notwithstanding having the merits on your side, you were likely to lose?

A Again, you're asking a trial lawyer who

always thinks he does the best job in the court. So yeah, I thought we should win and I thought we did the best job, and couldn't see any reason why we should lose other than that.

Q How long did Judge Porteous have the case under advisement before he issued a ruling?

A Almost three years. We rested and closed the record on July 31. We did some posttrial briefing and then he ruled, I believe, in late April or early May of 2000, almost three years later.

Q During the recusal hearing, Judge Porteous stated, and we can pull this up, if necessary, "I have always taken the position that if there was any -- ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity, if they wanted, to ask me to get off."

Do you recall him saying that?

A Yes.

Q Did the judge, during the course of the time when the case was under submission, notify you that he had solicited and received \$2000 or \$2500 from the law firm of Amato & Creely?

A No.

Q Did the judge or anyone else advise you

that while the case was under advisement, Mr. Amato paid approximately \$1500 for an anniversary party for Judge Porteous?

A No, no one told me that.

Q Were you made aware by the judge or anyone else about any hunting trips the judge went on with Mr. Amato or Mr. Creely?

A No, I didn't know about that.

Q Were you ever advised about a bachelor party in Las Vegas that Amato & Creely paid for a portion of?

A No, I was never aware of that.

Q When Judge Porteous issued his ruling in April of 2000, what did he rule?

A On the hospital claim, I think when the claim went to the judge, at trial the Liljebergs' expert valued it at \$70 million and the Liljebergs asked for that as damages for losing their hospital.

The judge, much to my surprise and, I believe, everyone else's, instead of giving the Liljebergs those damages, gave the hospital back to the Liljebergs, which involved undoing a federal judicial marshal sale with another party and then putting everything back into the -- it was like putting Humpty-Dumpty back together again. It was

astounding.

On the pharmacy contract, he refused and denied our request to terminate that contract for a number of reasons.

And on the pharmacy claims for accounting and for all the damages for Lifemark's allegedly cheating on the pharmacy billing, I believe the value of his award was between 15 and \$20 million. So --

Q Was this a resounding loss for Lifemark?

A Yeah, he could have awarded more damages on the pharmacy claims, but the other two claims were devastating. Alone the 15 million. The 20 million was certainly a lot of money.

Q Was the loss of the hospital itself the most devastating part of the ruling?

A Absolutely. You know, when I got the opinion, I read it and it was so astounding and so, I thought, wrong that I thought well, that's good for me because when I get to the 5th Circuit, this is so crazy, we should be able to get this reversed and it should taint the rest of the opinion.

Q And did you, in fact, appeal to the Court of Appeals?

A Yes, we did. We brought in a firm that

Tenet had a relationship with in Texas to help us, Haynes and Boone, and we handled the appeal, went through. The 5th Circuit's opinion came out in October of 2002.

Q What did the Court of Appeals decide?

A They reversed most of what Judge Porteous had done. They undid -- they gave us back the hospital, terminated the contract and lowered the damages on the pharmacy claims to, I think, around less than 5 million and remanded that part of the case on the pharmacy damages back to Judge Porteous for calculation of damages and more evidence.

Q Was the appeal a significant win for Lifemark?

A It made them very happy, yes, a very good result. It was --

Q I want to go through just a couple of the comments of the 5th Circuit in their opinion reversing Judge Porteous in large part. If we could pull up the first -- this is House Exhibit 63. It's the Court of Appeals opinion.

The court stated, and without objection, I would move this into evidence.

CHAIRMAN MC CASKILL: Without objection, moved into evidence.

(Exhibit 63 received.)

BY MR. SCHIFF:

Q The Court of Appeals opinion read, in part, "the extraordinary duty the district court imposed on Lifemark, who loaned the money to build the hospital and held the mortgage on it to secure its payment, is inexplicable."

Do you recall that part of the decision?

A Yes.

Q And do you agree with that analysis?

A Yes.

Q The court went on to say, "the district court's findings of a conspiracy to wrest control of the hospital and medical office building from Liljeberg and the Liljeberg Enterprises border on the absurd."

Is that your sense as well?

A Yes, it is. Although in briefing you don't use that language to a court. Although it's pretty astounding language from a court to a judge.

Q In your experience of more than 30 years, have you seen a Court of Appeals use this kind of language reversing a district court?

A No, courts are generally very deferential even when they reverse each other.

Q Further the court says, "the district court in Liljeberg enterprises offered no statutory case law for this proposition, for the simple reason that this is not the law."

Do you recall that?

A Yes.

Q The court goes on to say, "the idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment to wit approximately \$7.8 million to Travelers at any judicial sale, comes close to being nonsensical."

Do you remember that?

A It's coming back, yeah. I remember that.

Q And I assume you agreed with that conclusion as well?

A Certainly.

Q And one final quote. The court goes on to say, with respect to another part of the opinion, "this is a mere chimera existing nowhere in Louisiana law. It was apparently constructed out of whole cloth."

A I remember that one very well.

Q After the Court of Appeals ruled largely in Lifemark's favor, did the remaining issues in the

case settle?

A Yes, we settled within a month with the Liljebergs on the remaining case. My client did not want to go back to Judge Porteous on the remand, and the Liljebergs had some real estate next to the hospital that we were able to bargain for to get it over with quickly.

Q So it would have been necessary, if you wanted to pursue the case further after Court of Appeals opinion, to go back into Judge Porteous's courtroom?

A We did not want to do that, that's correct. The circuit sent us back to the trial court for that housekeeping.

MR. SCHIFF: Madam Chair, I have no further questions at this time.

CHAIRMAN MC CASKILL: Thank you, Congressman Schiff.

I'm going to ask for a vote of the committee. We had originally said we were going to adjourn at 6:30 today. It's 6:45. We can hold this witness over for the cross-examination in the morning or we can plug ahead and try to finish up this witness tonight.

And I would want to defer to the other

committee members as to their preference.

Plug? All right.

Professor Turley, cross-examination.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Mr. Mole, when were you first approached about the Lifemark case to come on as counsel?

A We opened the file in April of '96, so probably a few weeks or a month before that.

Q Was it Tenet Healthcare that approached you in seeking additional representation?

A Yeah, Tenet owned Lifemark, still does, I believe.

Q Now, at that point, the Liljeberg and Lifemark had been in litigation for a significant period of time, had they not?

A I believe the first lawsuit was filed in 1985, yeah, and had been in litigation since that time.

Q In your handling of the case, did you ever discuss with either lawyers or your client the value of delaying the case on the trial level?

A You mean in front of Judge Porteous?

Q While it was in front of Judge Porteous.

A You know, I think we probably talked about

getting a continuance, but our desire was to get the trial going. So yeah, we probably talked about it. You know, how abstract or definite I don't recall.

Q And did you -- did you have conversations with counsel that a delay in the case on the trial level would work to your advantage?

A You know, I don't recall that one way or the other, Mr. Turley. I believe when it got continued from November to June, that was on Judge Porteous's own sua sponte, after the recusal, because it shut the court down for at least a month.

Q What were the terms of your engagement by Lifemark? Was it an hourly, fixed rate, contingency?

A It was on our firm's normal hourly billing rates.

Q Now, am I correct you told Mr. Schiff that you filed a motion to appear in -- is it April 4, 1996?

A I --

Q Does that sound right to you?

A Yeah, it does. I enrolled as counsel of record in April.

Q Now, were you supplementing an existing litigation team, or were you replacing an

existent -- the previous litigation team?

A I was replacing. The two firms that had represented Lifemark previously were Jones Walker, whom Lifemark sued for malpractice in connection with another transaction, so that was a conflict, leaving behind a small real estate firm, Steeg and O'Connor, who had no real expertise in large litigation.

So I was a replacement for those two firms.

Q And isn't it true that when Judge Porteous entered the case, both sides were adding lawyers during that period?

A Well, Judge Porteous had been on the case when I arrived. I don't have any sense of how long. I think it may have been about a year. But I had -- I was not involved in what you've just described.

Q Now, Judge Porteous was assigned to the case randomly, wasn't he, to the best of your knowledge?

A Yeah, I believe a number of other Eastern District of Louisiana judges had had the case and recused themselves, or Opal Jones, who had the case immediately before him I think died, and I think then however the court gets cases like that moved to

the next judge. That's how it happened.

Q Now, do you recall previously saying that you thought it was unusual for Levenson and Amato, who were trial attorneys, to enter this bench trial case?

A I think that's one of the arguments I made in the motion to recuse, that these guys had no particular expertise in this kind of case.

Q But isn't -- isn't a bench trial still something trial attorneys do?

A Absolutely.

Q And didn't Mr. Levenson and Mr. Amato have a lot of trial experience?

A They did. I thought of them both as jury trial and less -- less complex cases. Turns out with Lenny Levenson, he had more experience, I think, with bankruptcy than I knew of at the time. I didn't know him at all.

Q Did you know then how many jury trials as opposed to bench trials these two had had?

A No idea.

Q Do you know now?

A No.

Q Now, when you filed your recusal motion for your client, did you know how long Mr. Levenson

or Mr. Amato had been working on the case before they put in their appearances?

A No.

Q Is it a common practice among litigators to work on cases for a while before they put informal appearances in cases?

A I only know what I do, which is sign up as soon as I'm able to.

Q Have you ever -- I didn't mean to interrupt.

A To answer your question, I don't know the practice on that. It's specific to the case.

Q Have you ever known lawyers who were working on a case that you knew of but then filed their appearances shortly before a hearing or trial?

A I can't think of any examples but nothing like that stands out in my mind one way or the other, Mr. Turley. I'm not an expert on timing of making your appearance.

Q Are you aware now that Mr. Amato, for example, had been working on this case for a couple of months before his appearance?

A No, I was not aware of that.

Q Were you --

A It surprised me.

Q Did you hear testimony today, I saw you in the room, did you hear previous testimony today?

A No. When I came in, I was quickly chased back out. I didn't hear that.

Q Oh, okay. Now, you had testified earlier that after Amato and Levenson's appearance in the case, you made telephone calls familiar with Levenson, Amato and Porteous; correct?

A I called people that I thought knew more about the background than I did, yeah.

Q Who did you call?

A The two I recall is I called Mr. Capitelli, who is now Mr. Amato's lawyer, because I went to high school with him as well. I think everybody in New Orleans went to high school together. And I called a man named Tommy Lane, who was on -- had involvement with Lifemark hospitals as well. Tommy may have called me, I'm not sure which. But those two I recall talking to about it.

Q Just those two?

A Yeah, I know I talked to others, but it's been 14 years, and that's what I recall.

Q Is it true you learned that Levenson was a friend of the Porteouses and they frequently went fishing together?

A Yeah, what I recall hearing about Lenny was that he was less -- he had less of a history with Judge Porteous than Jake did, but that Judge Porteous had taken them to a 5th Circuit judicial conference, maybe on more than one occasion, and that they were close friends in a social way, lunch, that sort of thing.

Q Now, when you filed your recusal motion for your client, isn't it true that you told the court that you knew that these were, quote, two of the court's closest friends?

A Those words sound familiar, yeah, I'm sure said that.

Q Didn't you also tell the court that, quote, your Honor's relationship with Mr. Amato and Levenson is well known within the legal community?

A I don't dispute that, Mr. Turley.

Q Do you recall that?

A I don't recall exactly what I said, but that sounds like what I said, yeah.

Q And do you recall saying that it needs no elaboration in this memorandum?

A Probably because I was incapable of elaborating.

Q Do you recall saying that the

relationships with Mr. Levenson and Amato were "very well known"?

A Again, I probably said that, yes. Those sound like my words. You know, I was trying to avoid saying people tell me the fix is on and I'm going to lose unless you get off the case, judges.

Q Now, do you remember stating in some of your past testimony that you were aware that the judge frequently had lunch and socialized with both of these lawyers?

A I don't recall those specific words, but certainly --

Q Do you recall testifying to that --

A That effect, yes.

Q -- effect?

A Yes.

Q Now, when Amato and Levenson entered the case, they entered in September 1996; right?

A I believe that's when they made their motion to enroll, yes.

Q And the trial was set for November 1996?

A Yes, it was.

Q Roughly two months?

A I'm trying to do the math, Mr. Turley, but I remember it being six weeks, because that's the

number of weeks that I verbalized to the judge, to the court.

Q But you had only entered the case at that time at roughly five months earlier; correct?

A That's correct.

Q Now, isn't it true that in that recusal hearing, Judge Porteous indicated that the November 4 date was probably going to be pushed back?

A I know it was his idea -- well, my recollection was that it was his idea to move it, which was a relief because we certainly needed more time. So yeah, that may have been the way he said it.

Q And do you recall that Judge Porteous indicated in the recusal hearing that this had been discussed before that hearing, of the movement of the date?

A I don't recall those words, but again, I don't have any clear recollection one way or the other how that came up.

Q But do you recall before the recusal hearing there were discussions about moving the trial date?

A You know, they may have been at a status conference, but like I said, I don't recall

precisely.

Q Isn't it true the actual trial date didn't occur until June 1997?

A Yeah, approximately mid-June '97.

Q So about nine months after they entered the case?

A Yeah, whatever -- yeah, however it adds up.

Q Mr. Mole, are you familiar with a case called Travelers Insurance versus Liljeberg Enterprises?

A Yes.

Q A 5th Circuit opinion in that case?

A Yeah, there were a number of Travelers decisions, district court and 5th Circuit. But I remember it.

Q I specifically want to ask you whether you are familiar with what the 5th Circuit said in that case, and I'm going to quote it, and you can tell me if you recollect this, that "many courts, therefore, have held that a judge need not disqualify himself just because a friend -- even a close friend -- appears as a lawyer."

Do you remember the 5th Circuit?

A Yes.

Q And that was -- that was before you filed your recusal motion; correct?

A I was aware of that when I filed my recusal motion, yes.

Q And the Liljebergs were part of that case; correct?

A Yes, they had asked the judge in the Travelers case, Judge Mentz, to recuse himself because he belonged to a social club that somebody else in the case belonged to, the Boston Club.

Q And do you recall Judge Porteous answering a specific question of whether he was friends with Amato and Levenson by saying "The answer is affirmative, yes," in the hearing?

A Yes, I recall him saying that.

Q And do you recall that you reiterated that you were aware that they were, quote, very, very close friends?

A I don't recall the exact words, Mr. Turley. You're asking me about things that have happened --

Q Or to that effect?

A Yeah, sure.

Q Do you recall Judge Porteous specifically advising you that he would stay proceedings to allow

you to appeal his decision on recusal?

A Yes. I don't think he wanted to proceed until that was resolved.

Q Do you recall in your petition to the 5th Circuit stating, "there is no doubt that Mr. Amato and Levenson had extremely close, if not best friends, with Judge Porteous"?

Do you recall a line to that effect?

A Again, those sound like they may be my words. I think I'll lose credibility here if I start telling you I remember those exact words. I don't.

Q Do you recall pointing out to the 5th Circuit that "Amato, Levenson and Judge Porteous didn't deny that fact"?

A It sounds like something I would have said, Mr. Turley.

Q Do you recall telling the 5th Circuit that "the public perception is that Mr. Amato and Levenson frequently dine with the Judge Porteous at their expense and that they travel and socialize with Judge Porteous on a frequent basis"?

A I recall that, yeah. I was working with very little information so I pushed it as hard as I could without crossing the line into making things

up.

Q Now, earlier with Mr. Schiff, you said that you were worried by the addition of a counsel that you listed as Amato, Creely and Levenson in one of your answers.

Robert Creely didn't make an appearance in the case, did he?

A Yeah. If I said that, I misspoke. I never -- I never -- I think I met Bob Creely once during the trial, and I wouldn't have known him before I saw him up here in Washington, again 15 years later.

Q Now, at some point you added -- I'm sorry, did you --

A I'm sorry, 13 years later.

Q Okay. At some point you added Don Gardner as an additional counsel to Lifemark; correct?

A Yeah, I believe we signed Don up in February or March of '97.

Q Isn't it true that Mr. Gardner told you that he didn't have much experience handling federal court litigation?

A I believe he did, yes.

Q And isn't it true that you wanted Gardner to talk to Judge Porteous about getting him to

recuse himself?

A Yeah. I don't recall that conversation. I know getting Judge Porteous to recuse himself was a priority with me, and one of the things I hoped Mr. Gardner's presence in the case would be -- would accomplish would be just that. I may have talked to Don about it.

Q So do you -- do you believe that you may have spoken to Don Gardner about approaching the judge?

A I don't think I talked to him about approaching the judge. I talked to him about it would be good if he could recuse himself, and having friends, good friends, on both sides of the case I thought would cause the judge to think, well, this looks bad, I don't want to do this, or get out of the case for some reason that he had some internal conflict with that.

Q Do you recall Gardner saying that he didn't think his presence in the case would have any effect on the outcome one way or the other?

A Don always made it clear to me that he didn't think, just as you said, that he would be able to steer the result of the case just by being in the case, and that the judge would not change his

view of the facts and the law based on his involvement in the case.

Q Do you recall if --

A Which of course I thought was a good thing.

Q I'm sorry, I didn't mean to interrupt you.

A Which I thought was a good thing, since I didn't think the judge should be doing that.

Q All right. Now, do you recall Don Gardner mentioning that he might talk to the judge outside of the courtroom?

A Don had a social relationship with the judge, and I believe -- Don likes wine, he likes to go to Napa Valley and order cases of wine, and talks about his love of wine.

And what he described to me were dinners and events where he would share that with Judge Porteous in a social way. That's -- that's what I understood their relationship to be.

Q By share, you mean the issue of recusal?

A I'm sorry?

Q To share this issue of recusal?

A No, to share wine.

Q Well, then so you're saying that you never -- that Don Gardner never spoke to you about

the chances that he might be able to talk to the judge outside the courtroom about the case?

A I don't recall that, Mr. Turley.

Q You don't recall that either way or --

A No, I mean, I don't -- I don't recall him telling me that he would talk to the judge ex parte.

Q Let me ask you, have you spoken to Don Gardner in the last month?

A No. I saw him -- last time I saw him was in Dorignac's, a supermarket we both go to to buy groceries on Sunday morning -- or Saturday morning. That was the last time I saw Don, about six months ago.

Q Are you aware that there is a bar inquiry regarding Mr. Gardner that's pending?

A You know, I have heard that rumor. I have no direct knowledge of it. Mr. Gardner did tell me when he saw me in the grocery store that he wished he had never met me.

Q I'm sorry?

A Mr. Gardner did tell me -- all he told me when he met me in the grocery store, I believe on a Saturday morning, was he wished he had never met me.

Q Did you take that as a reference to his role in the Lifemark case?

A Well, I don't think it's extremely pleasant for any of us to still be dragging through this stuff in whatever this year is, 2010.

Q Have you had an occasion to speak with Magistrate Jay Wilkinson about this case?

A No, I have never spoken with Jay Wilkinson about this case.

Q But you have spoken to his brother, Tom Wilkinson, about this case; correct?

A I have talked to Tom about it. Tom is the gentleman that I went to ultimately to ask for a recommendation that led to Mr. Gardner. But Tom is a separate person from his brother Jay. Jay Wilkinson used to be my partner, law partner.

Q Why would you go to Tom Wilkinson, the Jefferson Parish attorney, to ask him about Judge Porteous getting off the case?

A Tom was the parish attorney for Jefferson Parish. He knew -- Judge Porteous was from Jefferson Parish, he was a Jefferson Parish judge, he may well have worked with Tom Wilkinson.

Tom was somebody my partners recommended to help me solve that problem.

Q When you say "solve that problem," you mean the problem of having Judge Porteous in the

case?

A With two of his friends on the other side, yes.

Q And I -- so Tom Wilkinson was the Jefferson Parish attorney. Does that give him any relationship to your case, in terms of a civil case like Lifemark?

A I'm not sure what you mean, Mr. Turley.

Q Does the Jefferson Parish attorney have any formal relationship with the Lifemark case?

A No, no. He knew the social relationships and the professional legal scene in Jefferson Parish as well as anyone. And that was a milieu that I was seeking to deal with.

Q So is it true, then, or correct to say that you went to Mr. Wilkinson for the purpose of finding someone that would be able to get Judge Porteous off the case?

A I'm not sure I put it to Tom that way. I said, I have a problem. I have a case with Judge Porteous as the trial judge and it's worth a lot, a lot of money. And Jake Amato and Lenny Levenson have just signed up as trial lawyers with six weeks before trial, and I need to find someone who is knowledgeable and friendly with Judge Porteous to

help level that playing field. And that's what I went to him with.

I don't know that I talked to him about the recusal issue specifically.

Q And so it was Mr. Wilkinson that suggested Don Gardner?

A Yes.

Q And your testimony today is that you did not discuss how this might affect Judge Porteous in recusing himself from the case?

A I don't recall that, Mr. Turley. That -- I may have mentioned that I failed to get Judge Porteous recused, so, you know, it wouldn't hurt if he would do it, because I brought in another lawyer. But that wasn't the focus of what I talked to him about, in my recollection.

Q Did you have an occasion, then, to speak with Don Gardner about the case soon thereafter? How long did that take before you talked to him?

A Oh, I think probably less than a week.

Q Did you ask Mr. Gardner about his relationship with the judge?

A I'm sure I did.

Q How close friends he was with the judge?

A Yes. And that's where I learned what I

described about the social relationship so far.

Q Do you remember what you told Mr. Gardner you expected from him in this case?

A I think I told him I needed to hire him because I needed a friend of the judge on my side of the courtroom.

MR. TURLEY: Madam Chair, we would like to introduce into the record House Exhibit 35B, which we would like to give to the witness. This is the Gardner retainer agreement.

CHAIRMAN MC CASKILL: Without objection. Without objection, Exhibit 35 is entered into the record.

(Exhibit 35B received.)

MR. SCHWARTZ: Madam Chair, do you mind if I give a hard copy to the witness so he may look at it?

CHAIRMAN MC CASKILL: He can't see on his --

MR. TURLEY: It just may be easier for him to see.

CHAIRMAN MC CASKILL: Okay. That's fine.

BY MR. TURLEY:

Q Mr. Mole, we've handed you a House exhibit that is marked 35B. Is this the retainer agreement

that you arranged with Don Gardner?

A Yes, it appears to be. It's not signed.

Q Eventually it was signed, was it not?

A Yeah -- yeah, I don't know where it came from, but it's an unsigned copy of what I believe is the final letter.

Q Do you recall sending that retainer agreement to Don Gardner?

A I'm sure I did, yes.

Q Did you send it to Mr. Gardner or did you actually send it to Tom Wilkinson to give to Don Gardner?

A I don't recall sending it to Tim Wilkinson. My recollection is that we sent it to Don but -- but it says care of Tom Wilkinson so --

Q Why would you send a retainer agreement for Don Gardner to the office of Tom Wilkinson?

A I don't recall.

Q You can't think of any reason why you would do that?

A It may be at the time that I had met Mr. Gardner so recently I didn't know his address for sure. But I have no recollection of that.

Q Do you know whether Tom Wilkinson worked near Don Gardner's office?

A No, Don is in Harahan, which is on the East Bank, And Tom's office, to my knowledge, was by the courthouse in Gretna, across the river.

Q So they were separated by a river?

A Yes. That could explain why this is not signed because it could have been an earlier draft. But I just don't recall those details.

Q Do you recall if Don Gardner made any changes to that -- to the retainer agreement that you sent to him, in this case through Mr. Wilkinson?

A My recollection is that he did not, that he accepted it as written the first time.

Q Now, are you aware that Mr. Wilkinson told Gardner, just sit there with the people, that's all they want, they want you to sit there? Are you aware of that statement?

A No, I'm not.

Q Did you have a conversation with Mr. Wilkinson that indicated that that's basically what you wanted from Gardner?

A I don't recall that. You know, I met with Tom once in his office, in the parish attorney's office, before I met Don. He told me about Don, that I think -- the first time I met with Don was in my office alone.

So I think Tom's involvement was very brief.

Q Now, are you aware today that Gardner kicked back one-third of that 100,000 to Tom Wilkinson?

A Yeah, I've heard that in the years since, but I wasn't aware of that during the pendency of the case.

Q But -- and you testified earlier that Don Gardner didn't argue a single motion; right?

A I don't recall that he did, no.

Q Did he ever examine a single witness?

A No.

Q Indeed, didn't you testify earlier that Gardner did not work at trial, closed quote?

A I don't think I said that, no. He was there every day and stayed throughout the trial.

Q So a quote of -- that you said that he did not work at trial, that's not what your recollection is?

A He didn't do any oral arguments, he didn't do any witnesses. You know, Don was there and offered advice and insights about the judge.

Q Now, isn't it true, though, that you designated Gardner as the Lifemark representative to

meet with Judge Porteous each evening after the trial?

A No.

Q It is not true that you -- that Gardner was selected to meet with the judge in meetings after the trial to discuss outstanding issues?

A No. What I recall is Judge Porteous had a habit that I found interesting and unusual, after trial every day, he would call four of the lawyers -- there were a boatload of lawyers in the courtroom. And he would call four of us back. It was me and Don, I believe, and then on the other side it was, I believe, Doug Draper and Lenny Levenson, while he had drinks and smoked cigarettes, and we'd talk about the case, two on each side.

But nobody designated anybody. The judge would say I want Mole, Gardner, Levenson, Draper, and we'd go back in chambers and sit there for about 45 minutes while he had a couple of drinks and a bunch of cigarettes before they stopped that.

Q Now, Mr. Amato did do a lot of work at trial; correct?

A Yeah, he did.

Q He examined witnesses; correct?

A Jake did a bunch of witnesses.

Q And he also argued some motions; correct?

A Jake was very much at trial.

Q Did there come a time when you discussed a settlement of \$18 million with the Liljebergs?

A Yeah.

Q And an offer was communicated that you might settle the case for 18 million?

A During trial, yes.

Q Now, did Lifemark ever discuss its willingness to settle for more than 18 million with you?

A With me?

Q Uh-huh.

A No, 18 million was the limit of my authority.

Q But they turned down that offer, didn't they?

A Out of hand.

Q Now, the trial itself lasted 16 days; correct?

A Spread out over those weeks, yes.

Q And you testified previously you thought that Judge Porteous was a good trial judge; correct?

A You heard what I said.

Q And he ultimately issued a 105-page order;

is that correct?

A I remember it as 108 but I'll take the 105.

Q I'll be happy to take your word on that as well. Let me ask you, when you arranged for this retainer agreement, did you inform opposing counsel that you had just agreed to get an attorney into the case who would receive \$100,000 if the judge recused himself?

A No.

Q Did you inform opposing attorneys that Gardner had had lunches with the judge?

A No.

Q Did you inform opposing attorneys that he had a lot of socializing in his past with the judge?

A No. I think they were aware of that.

Q Did you tell them that they were very, very close friends?

A No.

Q Did you ask Gardner to make those disclosures to the court or to the other parties?

A No, I thought the judge's knowledge of all those things was what was important, and only he knew -- knew all that, to my knowledge.

Q Now, Mr. Mole, do you think it's ethical

to get a retainer agreement that offers an attorney \$100,000 to get a judge to recuse himself?

A Well, the retainer agreement doesn't offer Mr. Gardner \$100,000 if he gets Judge Porteous to recuse himself. It offers him \$100,000 in the event that Judge Porteous withdraws. So the decision was up to the judge, not Mr. Gardner. I didn't pay Mr. Gardner or my client didn't pay him to go to the judge with that.

Q So did you actually offer \$100,000 to all of the attorneys? I mean, was there an agreement with all of the attorneys that if Judge Porteous recused himself, everyone would get \$100,000?

A Who do you mean by "all the attorneys"?

Q Well, he had more than just you and Gardner on the case, right, representing Lifemark?

A Those were the only two firms on the case. Mr. Gardner and my firm.

Q Yes. But you had multiple lawyers that were working on the case, didn't you?

A I had associates, yes. Yeah.

Q Did you offer all those attorneys that if he recuses himself, everyone here is going to get \$100,000?

A No. They were already being paid.

Q And are you saying that there was -- that you didn't expect that Gardner's role here would be -- could be determinative in getting the judge to recuse himself in this agreement?

A I thought that -- maybe I was naive, but I thought that if the judge perceived that his relationship with Mr. Amato and Mr. Levenson and Mr. Gardner was such that people were willing to engage them, that it was obvious what was going on and that maybe he would step aside and recuse himself. That's really all I wanted him to do.

Q Mr. Mole, have you done these retainer agreements in other cases, with offering \$100,000 like this tied to a recusal?

A This is the only motion for recuse I've ever been involved with.

Q No, I'm talking about the retainer agreement. Have you ever had a retainer agreement that you've been involved in where an attorney was offered \$100,000, or any money, if a judge recused himself after he entered the case?

A No.

Q Have you ever even heard of any other attorney having a retainer agreement like this, where they have a contract that offers money if a

judge recuses himself from the case after he enters, as counsel?

A No, I'm not aware of any circumstance like this case.

Q And I just want to clarify one thing. Do you today believe that that retainer agreement that you signed was ethical?

A Yes, I believe it was ethical.

MR. TURLEY: That's all of our questions, Madam Chair.

CHAIRMAN MC CASKILL: How much time, Congressman, do you think you'll need on redirect?

MR. SCHIFF: Madam Chair, I think I'll be less than five minutes.

CHAIRMAN MC CASKILL: Okay.

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Mole, you were asked if you had any other cases where you had a retainer agreement like this one that had such a generous incentive if the judge withdrew from the case, and I think you said you never had; is that right?

A That's correct.

Q Did you ever have a case where you had attorneys drop in who were friends of the judges six

weeks before trial?

A No, this was the only one where that happened.

Q Did you have a case where people you went to for advice about the attorneys and the relationship with the judge told you the fix was in?

A No, I've never had that happen.

Q Did you ever have a case where your client insisted that you bring in a friend of the judge to even out the sides?

A No.

Q Did you ever have a case that was worth potentially \$200 million that might depend on the friendship the lawyers had with the judge?

A No, my client was very afraid that that friendship on the other side would cause them to lose that much money, and certainly it did cause them to lose for a time their hospital.

Q Mr. Turley asked you whether you thought it was unethical to have this kind of agreement. You didn't want to bring in Mr. Gardner, did you?

A No, I didn't.

Q Let me ask you to direct your attention to Exhibit 65, which is the transcript of the 5th Circuit proceedings involving Judge Porteous when he

examined you during that proceeding, page 194.

Judge Porteous says:

"Question: Are you aware that again while this case was under advisement that your counsel, Mr. Gardner, accompanied me and my family to Las Vegas for a bachelor party?

"Answer: No, I did not know that.

"Question: So he went -- if I represent to you that he went, do you find anything wrong with that?

"Answer: You know, I find something wrong with the whole system that allows that to happen, Judge Porteous, so yeah, I do.

"Question: Okay. But if he -- should I have recused myself because I went with Gardner?

"Answer: Well, I'm not the judge here but --

"Question: I'll withdraw that question.

"Answer: Yeah, you should. I think you should.

Judge Porteous: I'll withdraw the question. I don't have any further questions now."

Do you recall that exchange with Judge Porteous?

A I recall that very well. It's the only

time I've ever been cross-examined by a sitting federal judge.

Q What did you find troubling about the whole system that allowed that to happen?

A I think lawyers meeting ex parte with judges and socializing with judges before whom they have cases presents a serious problem.

I think to the extent Judge Porteous described concerned me. You know, I clerked for a judge in the first year of my practice, a federal judge, who is an old Irish judge, very tough man. And if he had a friend who had a case in front of him, he'd stop dealing with the friend until the case was over, and certainly wouldn't allow him to come into chambers or go out with him.

And maybe I'm unique, but I think that the system breaks down if the judges break down and if something other than the facts and the law, namely their relationships, dictate how the cases turn out.

MR. SCHIFF: No further questions, Madam Chair.

MR. TURLEY: We're done with this witness, thank you.

CHAIRMAN MC CASKILL: Bless you, Professor Turley.

You are excused.

We will reconvene at 8:00 a.m. in the morning. Thank you.

THE WITNESS: So I'm finished?

CHAIRMAN MC CASKILL: You are, Mr. Mole. Thank you for your attendance here today.

And thank all the parties today for your patience. We will try to get even more done tomorrow.

(Whereupon, at 7:26 p.m., the proceedings were adjourned, to be reconvened at 8:00 a.m., on Tuesday, September 14, 2010.)

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